UNAMIR

INTERNATIONAL TRIBUNAL FOR RWANDA

13 OCT 1994 - 20 OCT 1995

[1 STRICTLY CONFIDENTIAL]
[6 CONFIDENTIAL]
RH/WG 11 MAR 2009

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FILE 5
ACC. 1998/0078

V. INTERNATIONAL TRIBUNAL FOR RWANDA

In my report to the Security Council of 25 August 1995 (S/1995/741), I informed the Council of progress made regarding the practical and legal arrangements for the seat of the Tribunal, its financing, the status of contributions in funds and personnel and the activities of its various organs. Since that date, further significant developments have occurred with regard to the Tribunal's operations.

On 30 August, the Prosecutor for the Tribunal, Judge Richard Goldstone, and its President, Judge Laïty Kama, visited Kigali accompanied by Mr. Andronico Adede from the Office of Legal Affairs in New York who has since been appointed as the Registrar of the Tribunal. During the course of their three-day visit, they met with senior Rwandese Government officials and my Special Representative to discuss the Tribunal's operations in Rwanda. On 1 September, they visited the seat of the Tribunal in Arusha, Tanzania, to inspect the premises designated for the Tribunal, a proposed prison site, as well as accomodation arrangements for the Tribunal's staff.

A Headquarters Agreement between the United Nations and the United Republic of Tanzania was signed on 31 August 1995 and a Memorandum of Understanding with the Government of Rwanda is currently being negotiated, as is a lease agreement for the Tribunal's premises in Arusha. Despite continued administrative and logistical difficulties, it is still envisaged that the Tribunal's first indictments will be ready before the end of the year. Renovations to the Arusha International Conference Centre, where trials will be held, are expected to commence soon, and a separate wing to the detention facilities at Arusha prison is under construction. Progress continues to be made in the recruitment of staff for the Office of the Prosecutor. I would like to express my gratitude to those Governments which have contributed personnel and resources to the Tribunal, and hope that such support will continue in order to expedite the commencement of trial proceedings.

UNITED NATIONS NATIONS UNIES

UNITED NATIONS ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

RECEIVED
30 AUG 1995
OFFICE OF THE SRSG
UNAMIR

30 août 1995

A L'ATTENTION DU JUGE RAKOTOMANANA

SUBSTITUT DU PROCUREUR GENERAL, TRIBUNAL INTERNATIONAL

RE: <u>Retour de la Délégation à Nairobi le 1er Septembre 1995</u>

A la communication téléphonique de cet après-midi avec M. DEMETROS, Chef du Bureau de Liaison de l'Administration à Nairobi, les points suivants ont été retenus:

La Délégation envisage d'arriver à temps à Nairobi, au plus tard à 18H00 locales pour permettre au Juge Goldstone de prendre son avion à 19H00.

Pour le reste des membres de la Délégation :

- Deux chambres seront réservées à l'hotel Intercontinental pour le Juge KAMA et le Conseiller Juridique ADEDE ;

- Pour ceux qui doivent revenir Kigali par le vol MINUAR du 2/9/95 (Juge Rakotomanana, M. Sigg et Ms. Rafii), trois chambres seront réservées à l'hotel Panafric et une voiture les conduira le matin à l'aéroport.

M. DEMETROS (tel: 250-4-622202) accueillera la délégation à son arrivée. Il recommande que l'heure de départ d'Arusha lui soit communiquée en temps opportun.

B. P. [illegible]
Chef de Protocole

cc: SRSG
ED
CAO (Att. STO)

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

Seen thanks
SA
LA 20 5

TO: **Ambassador Shaharyar Khan**
SRSG

DATE: 20 May 1995
REF: OSRSG/LA/008

FROM: **I. Minta**
Legal Adviser/OSRSG

SUBJECT: **Report on Mission to Arusha with Judge Rakotomanana, 16-18 May 1995**

Our first meeting on the afternoon of our arrival in Arusha on 16 May, was a courtesy call by Judge Rakotomanana and his team, accompanied by Mr. Angelo (UNDP), on the Managing Director of the Arusha International Conference Centre, Mr. Cuthbert Tenga. We were informed that there had been previous meetings with a technical team from New York, and that arrangements had been made for formal meetings between both sides the following day.

The first formal meeting was held on 17 May in the morning. The UN team was led by Mr. Ralph Zacklin, Deputy Legal Counsel, OLA, and included Judge Rakotomanana's team as well as Mr. H. Gilli, Acting Head of Administration of the Tribunal, Mr. S. Katz from OLA (Lease Expert), and an architect from Nairobi. The Tanzanian team was in two parts: an Inter-Ministerial Task Force led by the Director of Legal Affairs at the Foreign Ministry (which included the Commissioner of Prisons and officials from the Interior and Foreign Ministries), and a team from the Conference Centre.

After the agenda and other preliminary issues were sorted out, we broke up into two groups to discuss the following:

1. The Headquarters Agreement between the United Nations (for the International Tribunal) and the Government of Tanzania, and

2. The Lease Agreement for the Conference Centre.

I joined Judge Rakotomanana and Mr. Zacklin to negotiate the Headquarters Agreement with the Ministry of Foreign Affairs, Prisons, and Interior Officials. The rest of the UN Team met separately with the Conference Centre Team to negotiate the Lease.

Both groups covered much ground but did not complete the discussions. The following is a summary of the state of affairs at the time we left.

Group I: Headquarters Agreement

The following issues remained to be resolved:

1. Whether Tanzanian law can override any rules/regulations of the Tribunal (Tanzanian side to check and respond).

2. Definite list of tax exemptions for the Tribunal (OLA to redraft provision after clarification by Tanzanian side).

3. Whether Tanzanian local staff can enjoy tax exemptions (Tanzania to clarify and an apparent violation of the 1946 Convention, resulting from its tax law, to be resolved).

4. Tanzania to clarify whether local staff can enjoy immunity from national service obligations.

5. Visa formalities for witnesses and other persons summoned by the Tribunal (from abroad): whether applicable fees can be waived.

6. Security arrangements for the Tribunal's premises: respective responsibilities to be defined.

7. Arrangements with regard to the issuance of ID cards (by the Government, for Tribunal and affiliated personnel).

8. Constitutional requirements regarding ratification and entry into force of the Agreement.

The Tanzanian Team is to report to the Government and respond to Mr. Zacklin on how to carry matters forward.

Group II: Lease Agreement

The whole (UN) Team had previously viewed the sections of the Conference Centre to be allocated to the Tribunal, namely, two whole floors of Block B of the Centre, plus an Annex with a large lobby, conference room, and offices.

Group II was to meet again at 3 p.m. on 18 May. At our last plenary prior to the departure of Judge Rakotomanana's team on 18 May, Group II reported the following outstanding issues on the lease:

1. When does rent start accruing?

2. How much refurbishing/rehabilitation of the premises by the landlord?

3. What structural changes and refurbishment are to be made by the UN, and the status of any such improvements at the end of the lease;

4. Status of any movable (but in-built) equipment installed by the UN (such as air-conditioning and communications systems) at end of lease;

5. Who repairs the roof (of the Annex), which is leaking badly? If by the UN, is there to be a rebate against the rent, and on what schedule?

6. How much rent?

The Group was also to take a look at the holding prison for suspects on trial, which is to be refurbished at UN expense. It should be noted that one of the issues that was debated at length in **Group I** was whether Tanzania will offer prison facilities for persons **convicted** by the Tribunal (as distinct from those on trial). Tanzania made it quite clear that they were not interested in that. The question of where prison sentences are to be carried out is to be decided by the Judges under the Statute of the Tribunal.

Overall, as regards the lease, the Architect's estimate was that it will take 6-12 months to make the premises suitable for use by the Tribunal. The cost of refurbishment is also yet to be determined.

Note:

Mr. Rupert Lewis, the Logistics Officer, is to prepare a separate report on Logistics.

ATTENDANTS AICC 17.01.95

NOVOTEL
MOUNT MERU

1. David Mutiso — Mutiso Menge International Architects / Planning Consultants
2) Rupert Lewis — Logistics Officer — UNAMIR
3). Colin Port — Director of Investigations — I.T.R.
4) Guillaume Tixier — Interpreter — UNAMIR.
5) Hassan Bubacar Jallow — Deputy Prosecutor — I.T.R
6) Hermenia H. Gilli — Asst. Chief of Admin Records (ITR)
7) Ralph Zacklin — Deputy Legal Counsel OLA NY
8) Stephen KATZ — Senior Legal Officer OLA NY
9) Ile Minta — Legal Adviser UNAMIR
4) J. Livio Angeli — UN Accident Coordinator DSM
10) Danford Mpumilwa AICC
10) Cuthbert Tenga, AICC
12) Augustino N. Nangaro — Prisons Hqrts DSM
13. Francis Nolambuga. — Head of Legal Affairs Section, Ministry of Foreign Affairs and International Cooperation
14. Rogatius A. Shao — MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL
DTA) COOPERATION

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

INTEROFFICE MEMORANDUM

DATE: 20 May 1995

f. ED/SRSG
To note for
SRSG's info
20/5/95

TO: Mr. Ally Golo, Officer-In-Charge
Administration

FROM: Rupert Lewis
Logistics Officer

SUBJECT: **Report of the Recently Concluded Joint UNAMIR and International Tribunal Mission to Arusha, 16 to 18 May 1995**

Please find attached a copy of my report on the recently concluded Mission to Arusha, Tanzania.

cc: Chief, ISS

Mission Report

I. A combined UNAMIR and the International Tribunal for Rwanda (ITR) delegation travelled to Arusha, Tanzania over the period of 16 to 18 May 1995.

The delegation was comprised of:-

Mr. H. Rakotomanana	-	Deputy Chief Prosecutor, ITR
Mr. Colin Port	-	Director of Investigations, ITR
Mr. Ike Minta	-	Legal Advisor, UNAMIR
Mr. Rupert Lewis	-	Logistics Officer, UNAMIR
Mr. G. Tixier	-	Interpreter (UNV). ITR

II. While in Arusha, the Mission team met and became a part of a larger team of other senior United Nations officials who had travelled both from New York and Dar-es-Salaam, viz:-

Mr. Ralph Zacklin	-	Deputy Legal Counsel, OLA, New York
Mr. Herman H. Gilli	-	Acting Chief of Administration, ITR
Mr. Stephen Katz	-	Senior Legal Officer, OLA, New York
Mr. J. Victor Angelo	-	UNDP Resident Representative and United Nations Resident Co-ordinator in Tanzania
Dr. R. Gordian Rugarabamu	-	Asst. Resident Representative (Programme)

III. A series of meetings and discussions were held with the Government Task Force representatives and a Management Team for the Arusha International Conference Centre (AICC) which had been selected as the site for the Headquarters of ITR.

The United Nations Mission team divided itself into two (2) components, so as to better manage the discussions/negotiations on the Headquarters Agreement and the Lease Agreement.

One component was led by Mr. Zacklin. It dealt with the Headquarters Agreement, while the other was led by Mr. Gilli. It dealt with the Lease Agreement, which is rental of premises for the site for offices, courts, registry, conference rooms, holding cells, judge's chambers, and other administrative quarters for the various activities of the ITR which will be based in Arusha.

IV. I was a party to on-going discussions on the Lease Agreement and other logistics support which will be needed by the ITR.

Arising from later discussions and briefings by Mr. Gilli, it was learnt that a United Nations assessment team, of which he was a part, had spent some time prior to our arrival on 16 May, assessing the needs and logistics requirement of the ITR, as it pertains to the refurbishment of the selected areas of the AICC, in order to facilitate the work of the International Tribunal for Rwanda.

The relevance and impact of that earlier assessment team made the role of the UNAMIR logistics input redundant, as was pointed out by Mr. Gilli, who went on to state that a report will be prepared and presented by that team, and it will be incorporated into the budgetary needs of the ITR.

V. With regard to the designated site of the ITR Headquarters at the Arusha International Conference Centre, the following have been determined:-

- the ground floor and the entire third floor are available for immediate refurbishment and renovations by the ITR administrative body;

- the roof of Building "B" will be repaired by the United Nations (the roof is leaking and needs major repair);

- the air conditioning system will be rehabilitated by the United Nations;

- the United Nations will provide two (2) 500-KVA generators which will provide a continuous source of electricity. (One will be a backup unit);

- Judges and Prosecutors will be situated on one floor;

- the Registrar and the Registry will be on the same floor when the offices have been selected;

- the ground floor will likely house ITR administrative offices, conference rooms, and a court. (Additional courts will be located on either the third or fourth floors);

- financial assistance to offset the costs of re-roofing, relocation of present tenants and management offices, and other modifications, will be made available to the Management of AICC;

- the Government will sign the Lease Agreement as a Witness;

- the Lease Agreement will be in effect until the ITR is dissolved;

- the cost of rental of space by the ITR Headquarters is still to be finalized;

- the Headquarters Agreement for the ITR will be the guiding principle of the Lease Agreement, and as such, its diplomatic coverage will extend to the ITR's use of property in the Host Country.

VI. In conclusion, it should be stated that on 18 May, a joint meeting of all the parties (United Nations Mission personnel, the Government Task Force representatives and the AICC management team) was held. At that meeting information was shared as to the status of discussions and negotiations as they pertained to both the Headquarters and Lease Agreements.

A: <u>On the Lease Agreement</u>

- That there was a tentative understanding to lease/occupy two floors (3 and 4), plus additional areas on the ground floor. These areas are located in Building "B" of Centre Complex.

- Payment of rent and how much will be charged are still to be finalized.

- The costs of refurbishment and renovations: Who pays - the United Nations or the AICC Management?

- What structural changes can the United Nations make to the Conference Centre, and what happens when the Tribunal concludes its work?

- United Nations assets brought into Arusha - generators, telephone and other communications systems, etc.: What happens to them?

- Repairs to the roof: How will this cost be recovered by the United Nations - through delayed repayments of rent deferrals?

B. Headquarters Agreement

Revisions to the draft text have been requested by the Government representatives.

The United Nations (Mr. Zacklin) has revised the text and it will be taken to Dar-es-Salaam for final approval at the Ministerial level.

Of note, is the fact that a "Letter of Understanding" will be prepared by Mr. Zacklin and signed by the Government representatives. That letter will be an acknowledgement of the negotiations which have taken place to date.

Prepared by:

Rupert Lewis
Logistics Officer
UNAMIR
19 May 1995

Tribunal file.

UNITED NATIONS
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MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

INTEROFFICE MEMORANDUM

DATE: 24 May 1995

TO: Mr. Ike Minta
Legal Advisor

FROM: Rupert Lewis
Logistics Officer

SUBJECT: **ADDENDUM TO THE REPORT ON THE MISSION TO ARUSHA, 16-18 MAY 1995**

SRSG : in response to your queries. — Ike — 24.5.95

1. As per our discussions, please find attached an Addendum which provides the requisite information on outstanding issues which were of concern to the SRSG.

2. Thank you.

Seen thanks & 24/5

cc: Mr. Sammy Bou
Officer-In-Charge
OSRSG

Addendum to the Arusha Mission Report

In response to the need for answers to the following:-

a) What about residential accommodation for judges, staff, etc.?

b) Who protects in Arusha?

c) What about quick telecommunication?

d) What about diplomatic pouch?

e) Travel between Kigali - Arusha. How will witnesses, prisoners be escorted?

An itemized synopsis is hereby provided viz:-

I. Residential Accommodation

The group was briefed on this by Mr. Gilli, who was somewhat non-committal as to the selection of designated areas and buildings.

- Inaccessibility and the poor water supply and electricity had been given as major negatives.

- Thus, unlike the identification of sites for offices and courts, that was not done with regard to the residences for judges and other senior staff.

Hotel accommodation, which was not fully explored, still seems like the most viable immediate option.

II. Protection/Security for Staff

The provision of security for ITR staff in Arusha was not discussed in detail due to the non-finalization of the Headquarters Agreement.

III. Telecommunications

It was reported by Mr. Gilli that an advance team had done an assessment and that a report and recommendations were forthcoming.

Thus, the issue was not revisited, as it seemed that there was not much enthusiasm for a UNAMIR role.

IV. Diplomatic Pouch

As it became evident that the state of developments was such that there was no definitive date as to when Administrative activities in Arusha would begin, the issue of a Pouching system was deferred.

But prior discussions with the UNAMIR Registry and pouch service had provided detailed information as to its ability to facilitate the same for the Tribunal.

V. Travel - Movement of Witnesses and Prisoners

That issue was not developed due to the reluctance on the part of the Tanzanian Government representatives to waive the requirement of payment of fees for entry visas for witnesses and other trial experts.

Of note was the fact that ITR administrative officials were reluctant to pursue the issue of travel between Kigali and Arusha due to their inability to underwrite the potential costs which would be incurred due to the payment for entry visas.

Conclusion

All in all, it should be reiterated that there was a reluctance to pursue most issues due to the absence of both an approved budget for the ITR and the conclusion of the Headquarters Agreement with the Tanzanian Government officials.

Prepared by:

Rupert Lewis
Logistics Officer
UNAMIR
23 May 1995

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ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR - MINUAR

NOTE VERBALE

SRSG/NV/158/95

La Mission des Nations Unies pour l'Assistance au Rwanda (MINUAR) présente ses compliments au Ministère des Affaires Etrangères et de la Coopération Internationale de la République Rwandaise et a l'honneur de l'informer que le Juge **Leity KAMA**, Président du Tribunal pour le Rwanda et le Procureur **Richard GOLDSTONE**, arriverront à Kigali le 30 août 1995 et repartiront dans la soirée du 1er septembre.

Le juge **Leity KAMA** et le Procureur **GOLDSTONE** souhaiteraient rencontrer, l'après-midi du 30 août ou pendant toute la journée du 1er september, à une heure de leur convenance, les autorités rwandaises suivantes :

- S.E. M. **Pasteur Bizimungu**, Président de la République;
- S.E. le Général Major **Paul KAGAME**, Vice-Président de la République et Ministre de la Défense;
- S.E. M. **Faustin TWAGIRAMUNGU**, Premier Ministre;
- S.E. M. **Anastase GASANA**, Ministre de Affaires Etrangères et de la Coopation Internationale;
- S.E. M. **Alphonse-Marie NKUBITO**, Ministre de la Justice.

La Mission des Nations Unies pour l'Assistance au Rwanda saisit cette occasion pour renouveler au Ministère des Affaires Etrangères et de la Coopération Internationale de la Ré ublique Rwandaise les assurances de sa très haute considération. Hle.

Kigali, le 14 août 1995

Ministère des Affaires Etrangères
et de la Coopération Internationale
de la République Rwandaise
KIGALI

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

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MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

NOTE VERBALE

SRSG/NV/161/95

La Mission des Nations Unies pour l'Assistance au Rwanda (MINUAR) présente ses compliments au Ministère des Affaires Etrangères et de la Coopération Internationale de la République Rwandaise et, se référant à sa note verbale N° SRSG/NV/158/95 du 14 août 1995, a l'honneur de lui transmettre sous ce couvert la lettre reçue du Tribunal International relative au programme de visite au Rwanda du Juge Leity KAMA, Président du Tribunal International pour le Rwanda et du Procureur Richard GOLDSTONE, du 30 août au 1er Septembre 1995.

La Mission voudrait attirer la haute attention du Ministère sur le souhait des Juges Kama et Goldstone de renconrer également S.E. M. le Président de l'Assemblée Nationale.

La Mission des Nations Unies pour l'Assistance au Rwanda saisit cette occasion pour renouveler au Ministère des Affaires Etrangères et de la Coopération Internationale de la République Rwandaise les assurances de sa haute considération.

UNITED NATIONS UNAMIR

Kigali, le 15 août 1995

Ministère des Affaires Etrangères
et de la Coopération Internationale
de la République Rwandaise

KIGALI

UNITED NATIONS NATIONS UNIES

ICTR

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIBUNAL PENAL INTERNATIONAL POUR LE RWANDA

Aegon Building, Churchillplein 1, 2501 EW The Hague, The Netherlands Telephone (3170) 344-5347 Fax 31-70 344-5325
Kigali, Telephone (255) 84266 ext 11013 Fax (212) 963-4001

The Deputy Prosecutor **Le Procureur Adjoint**

Kigali, le 15 août 1995

Excellence,

Faisant suite à ma lettre du 11 août 1995 et après concertation officieuse avec le Protocole d'Etat, j'ai l'honneur de porter à votre connaissance que le programme de visite au Rwanda et à Arusha du Président Leity KAMA et du Procureur Général Richard GOLDSTONE gagnerait à être établi ainsi qu'il suit (le vendredi étant un jour du Conseil des Ministres)

- Rencontres avec les Hauts Dirigeants du Rwanda et le Chef de la Mission pour l'assistance au Rwanda : l'après-midi du mercredi 30 août et toute la journée du jeudi 31 août 1995,
- Visite à Arusha : le vendredi 1er septembre 1995,
- Ils repartiront pour Nairobi en fin d'après-midi du 1er septembre.

Il est souhaitable qu'ils rencontrent, dans la mesure du possible, les personnalités politiques suivantes

. SEM le Président de la République,
SEM le Vice-Président de la République,
. SEM le Président de l'Assemblée Nationale
. SEM le Premier Ministre,
. SEM le Ministre des Affaires Etrangères et de la Coopération
SEM le Ministre de la Justice.

Confirmant les termes de ma correspondance susvisée, je vous serais reconnaissant de tous arrangements qui permettront d'assurer au mieux le déplacement de ces deux Chefs de Juridiction et leur hébergement au Complexe du Village Belge.

Avec mes remerciements, je vous prie d'agréer, Excellence, l'assurance de ma haute considération.

SEM L'Ambassadeur Shaharyar KHAN
Représentant Spécial du Secrétaire Général
Chef de la Mission pour l'Assistance au Rwanda

Honoré RAKOTOMANANA

VII. INTERNATIONAL TRIBUNAL FOR RWANDA

During the reporting period, the International Tribunal for Rwanda has continued its investigation of genocide and other serious violations of international humanitarian law under the direction of its Deputy Prosecutor based in Kigali. I am pleased to report certain favourable developments in the implementation of Security Council resolution 955 (1994) establishing the International Tribunal. In Kigali, premises for both accomodation and office needs of Tribunal staff have been located, and it is expected that the office in Kigali will now rapidly expand in size with a combination of recruited and contributed personnel.

The six Judges of the two trial Chambers of the International Rwanda who were elected by the General Assembly in May 1995 were sworn in and they held their first plenary session in The Hague from 26 to 30 June. During this session, the judges elected Judge Laity Kama (Senegal) as President and Mr. Yakov A. Ostovsky (Russian Federation) as Vice-President of the Tribunal. With the adoption of the rules of procedure and evidence for the Tribunal at this session, it is now envisaged that the Tribunal's first indictments will be made before the end of this year.

Due to the continuing problems being experienced with regard to the International Tribunal's premises in Arusha, it is still uncertain where the initial trial proceedings will take place. Following the visit of a United Nations mission to the United Republic of Tanzania in May, it emerged that an estimated six to twelve months would be required to complete the necessary refurbishment of the premises designated for the Tribunal. Additionally, several outstanding issues remain to be resolved in the negotiation of the Tribunal's headquarters agreement with the Government of Tanzania, as well as the lease agreement for the premises.

Greater concerted efforts are required to enable the International Tribunal to start functioning in Arusha and to maintain a fully operational office in Kigali. In this regard, it is hoped that the setting up of the necessary financing and administrative arrangements will be made as soon as possible. The General Assembly's approval of a budget for the Tribunal will greatly facilitate the operational development of the Tribunal and will permit recruitment of key personnel to take place on an accelerated basis. These financing measures will enable the Tribunal to enter into contractual commitments, particularly with regard to lease arrangements, and the planning of a work programme for investigation, the preparation of indictments and the holding of trials.

* Please note that the draft resolution on the Tribunal's budget will be presented to the General Assemby on Friday, 21 July 1995.

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

PRESS RELEASE

UNAMIR NR 95-32 26 May 1995

GENERAL ASSEMBLY ELECTS SIX JUDGES OF INTERNATIONAL TRIBUNAL FOR RWANDA

The United Nations General Assembly elected on 24 and 25 May 1995 in secret balloting the judges who would serve in the trial chambers of the International Criminal Tribunal for Rwanda. Elected were:

- Navanethem Pillay of South Africa,
- Laity Kama of Senegal,
- T.H. Khan of Bangladesh,
- Lennart Aspegren of Sweden,
- Yakov A. Ostrovsky of the Russian Federation,
- William H. Sekule of Tanzania.

The Tribunal consists of the following:

- two trial chambers, each made up of three judges;
- a five-judge Appeals Chamber, appointed by the President of the Tribunal;
- a Prosecutor, who will be responsible for investigating and prosecuting violations of international humanitarian law; and
- a Registry which will be responsible for administering and servicing the Tribunal.

The six judges are elected for terms of four years on a full-time basis. Their team will be reinforced by the members of the Appeals Chamber for former Yugoslavia, who will also serve as members of the Appeals Chamber for Rwanda.

For more information, please contact the Office of the Spokesman in Kigali: phone: 84266 ext.: # 11075 or 11124 or 11066.

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

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MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR-MINUAR

Office of the Spokesman

PRESS RELEASE

UNAMIR NR 95-34 **28 June 1995**

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA BEGAN ITS WORK

The 11 Judges of the International Criminal Tribunal for Rwanda unanimously elected Laity Kama of Senegal as President of the Tribunal, and Yakov Ostrovsky of the Russian Federation as Vice-President.

The Tribunal began its work on Monday 26 June with the opening of its first plenary session in the Hague. The Tribunal for Rwanda was established by the Security Council to prosecute persons who committed genocide and other serious violations of humanitarian law last year. It is currently meeting at the headquarters of the International Tribunal for the former Yugoslavia, but will be based in Arusha, Tanzania, with an office in Kigali.

For more information, please contact the Office of the Spokesman in Kigali: phone: 84266 ext.: # 11075 or 11124 or 11066.

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Office of the Spokesman

PRESS RELEASE

UNAMIR NR 95-35 **5 July 1995**

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA READY TO CARRY OUT ITS MISSION

The Judges of the International Criminal Tribunal for Rwanda are ready to carry out the important mission they have been entrusted with by the international community. On 30 June 1995 in the Hague, they concluded the deliberations of their first session by adopting the new Rules of Procedure and Evidence under the chairmanship of Judge Laïty Kama (Senegal).

The Judges also heard the Prosecutor, Mr. Richard Goldstone, and the Deputy Prosecutor, Mr. Honoré Rakotomanana.

The two trial Chambers of the International Criminal Tribunal for Rwanda are composed as follows:

Trial Chamber No.1:

Judge Laïty Kama, Presiding Judge
Judge Navanethem Pillay
Judge Lennart Aspegren

Trial Chamber No.2:

Judge William H. Sekule, Presiding Judge
Judge Tafazzal H. Khan
Judge Yakov A. Ostrovsky

Before adjourning the session, the Judges laid down a timetable for their next meetings and decided that one of them should always be in the Hague in October, November and December to review indictments, pending the establishment of the Tribunal in Arusha.

The International Criminal Tribunal for Rwanda is making an appeal to the international community to do everything in all due haste to overcome the serious financial problems the Tribunal is facing.

The International Criminal Tribunal for Rwanda thereby hopes to meet the expectations of the Rwandan people and of the international community to see that those responsible for the crimes committed during 1994 are judged after a fair trial.

For more information, please contact the Office of the Spokesman in Kigali: phone: 84266 ext.: # 11075 or 11124 or 11066.

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UNAMIR-MINUAR

NOTE A MS. RAFII

Objet : Rapport du Secrétaire général sur le Tribunal internationl pour le Rwanda

Le Représentant spécial vient de vous adresser copie d'un nouveau rapport du Secrétaire général sur le Tribunal international pour le Rwanda.

Sa remarque sur le rapport, comme vous pouvez le constater, est qu'il est décourageant. A ce sujet, je vous serais obligé de bien vouloir étudier ce rapport de manière à mettre en lumière les passages qui ne correspondent pas à la réalité. Par exemple, le rapport, en son paragraphe 4, indique un certain nombre de faits qui, à mon avis, ne sont pas vérifiés. Je vous serais également obligé en présentant votre analyse du rapport, de bien vouloir faire des propositions sur ce qu'il y aurait lieu de faire pour faire avancer les choses, afin que le Tribunal commence effectivement ses travaux dans la seconde moitié de 1995, comme l'a annoncé le Juge Goldstone.

WS

Wilfrid de SOUZA
12 juillet 1995

UNITED NATIONS NATIONS UNIES

FACSIMILE TRANSMISSION

TO: Mr. Shaharyar Khan
SRSG
FAX #: 3.3090

FROM: Elisabeth Lindenmayer, UNATIONS, New York
FAX #: 3.6460

DATE: 10 July 1995

PAGE: 1 of 19

As discussed. Best regards.

the report is
really discouraging.

ED
Leaders

UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/1995/533
30 June 1995

ORIGINAL: ENGLISH

FURTHER REPORT OF THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 5 OF SECURITY COUNCIL RESOLUTION 955 (1994)

I. INTRODUCTION

1. In paragraph 5 of resolution 955 (1994) of 8 November 1994, I was asked to report periodically to the Security Council on the implementation of the resolution establishing the International Tribunal for Rwanda. In my first report on 13 February 1995 (S/1995/134), I informed the Council of the steps envisaged for the practical implementation of the resolution and made my recommendation that Arusha, United Republic of Tanzania, should be selected as the seat of the Tribunal. The present report describes the manner in which implementation has evolved since my last report, provides up-dated information regarding the arrangements being made for the seat of the Tribunal and sets out the current situation as regards the financing of the Tribunal.

II. PRACTICAL IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 955 (1994)

2. In my report of 13 February 1995, I described a two-phase approach to the implementation of the resolution. In a first phase, an investigative/prosecutorial unit was to be established in Kigali under the immediate supervision of the Deputy Prosecutor, Mr. Honoré Rakotomanana (Madagascar), who officially assumed his functions on 1 March 1995. In the second phase, it was envisaged that the seat of the Tribunal would be established at the location to be determined by the Council.

3. The establishment of a Prosecutor's office in Kigali was based on the decision taken by the Council in paragraph 6 of resolution 955 that an office will be established and proceedings conducted in Rwanda where feasible and appropriate.

4. For a variety of reasons, however, the Office in Kigali has yet to become fully operational. The uncertain budgetary situation made it difficult to attract and recruit qualified personnel; the core staff of the investigation section of the Office expressed concerns about the safety of personnel and the

security of documents; and premises for both accommodation and office needs were either unavailable or inadequate. The establishment of the Office in the first 10 weeks has, therefore, been more difficult than anticipated and until very recently it had no permanent presence in Kigali.

5. In the meantime, the process of investigation into serious violations of international humanitarian law and acts of genocide has been actively directed by the Deputy Prosecutor from Kigali and The Hague. The investigation, which focuses on approximately 400 identified suspects, is being conducted both in and outside Rwanda, notably in other African countries, Europe and North America, where the principal planners of the crime of genocide are believed to be located. The nature of the investigation in Europe and North America necessitates a temporary presence of investigators in the Prosecutor's Office in The Hague.

6. The prospects for a fully operational Office of the Prosecutor in Kigali have improved somewhat in recent weeks. As my Special Representative informed the Council on 5 June 1995, the general situation in Kigali has improved; notwithstanding the limited commitment authority that is the current basis of the financing of the Tribunal, certain key personnel can now be recruited, with the approval of the Controller, for up to one year; a small number of contributed personnel have also been deployed to Kigali; premises for both accommodation and office needs have been located, and with the reduction in size of the United Nations Assistance Mission for Rwanda (UNAMIR), the space requirements of the Office can be met, even if the demand should grow beyond the number of posts currently foreseen. Notwithstanding the reduction of its force level, UNAMIR will continue to provide comprehensive support for the security of personnel and premises of the Prosecutor's Office, in accordance with resolutions 965 (1994) and 997 (1995). Barring any unforeseen difficulties of a practical or a security nature, it is expected that the Office in Kigali will now rapidly expand in size with a combination of recruited and contributed personnel.

7. Aware of the difficulties so far encountered in the early operation of the Prosecutor's Office in Kigali, I nevertheless wish to emphasize the considerable importance I attach to the presence of a fully operational Office in Kigali. Such a presence is not only mandated by the Security Council, but is also imperative for the socio-educational impact it would have on the people and Government of Rwanda. It has repeatedly been emphasized by the Government and the international community that the problem of impunity for crimes committed in Rwanda must not only be addressed but must also be seen to be addressed by the people most directly concerned.

8. The determination by the Council in resolution 977 (1995) of 22 February 1995 that, subject to the conclusion of appropriate arrangements, the seat of the International Tribunal will be at Arusha, opened the way to the election of the six trial judges by the General Assembly on 24 and 25 May 1995. Since the arrangements governing the seat of the Tribunal have yet to be completed, the first plenary session of the International Tribunal for Rwanda took place in The Hague between 26 and 30 June 1995. During this session the judges adopted the rules of procedure and evidence of the Tribunal and elected

Mr. Laity Kama (Senegal) President and Mr. Yakov A. Ostrovsky (Russian Federation) Vice-President.

III. ARRANGEMENTS CONCERNING THE SEAT OF THE TRIBUNAL

9. Following the adoption of resolution 977 (1995) on the seat of the Tribunal, the Government of the United Republic of Tanzania confirmed its readiness to host the Tribunal in Arusha by a letter dated 10 April 1995 from the Permanent Representative of the United Republic of Tanzania addressed to the Legal Counsel.

10. A technical mission of the United Nations composed of representatives of the Buildings Management Service and the Purchase and Transportation Service of the United Nations Secretariat visited Arusha between 10 and 16 May 1995 to survey the premises of the Arusha International Conference Centre and the facilities available in Arusha to accommodate the Tribunal. The mission held discussions with the management of the Arusha International Conference Centre concerning arrangements that would be needed for obtaining suitable premises there. That was immediately followed, from 17 to 19 May 1995, by a mission composed of representatives of the Office of Legal Affairs of the Secretariat to discuss with representatives of the Government a draft headquarters agreement and to discuss a draft lease agreement with representatives of the Arusha International Conference Centre. The Acting Chief of Administration of the Tribunal participated in both missions. The discussions of the draft agreements took place, ad referendum, on the basis of draft texts that had previously been prepared by the Office of Legal Affairs and made available to the Government. A record of discussion on both instruments was prepared at the close of the meetings.

11. While a number of issues remain to be resolved on both agreements, these are not thought to be insurmountable. For example, the outstanding issues in the draft headquarters agreement include the relationship of regulations made by and operative on the premises of the Tribunal with the laws and regulations of the United Republic of Tanzania; the exemptions of the Tribunal from certain indirect taxes; the status, privileges and immunities of locally recruited staff of the Tribunal; and the granting of visas free of charge and the use of United Nations travel documents. With respect to the draft lease agreement, all terms and conditions are subject to review and approval by the appropriate United Nations units, and issues such as the amount of rent, identification of the space and the timing of the availability of the premises to the Tribunal will have to be resolved. Other prerequisites for entering into a lease agreement include provision of the necessary funding, as well as completion of procedures and issuance of approvals required under the United Nations Financial Regulations and Rules. It is hoped that it will be possible in the near future to finalize both a headquarters agreement and a lease agreement, subject to the necessary approvals by the respective organs of the Government and the United Nations.

12. It should also be noted that, in addition to the lease, arrangements, including contracting, will have to be made for the renovation, construction and repair work in the Arusha International Conference Centre in order to provide

the necessary facilities for the Tribunal. A report on these aspects from an architectural/planning consultant engaged by the United Nations has been received and is now being examined. The conclusion of a lease agreement and the contractual commitments for the renovation, construction and repair work are, of course, linked to the budget of the Tribunal, which is now in the final stages of preparation.

IV. FINANCING OF THE TRIBUNAL

13. The International Tribunal for Rwanda has thus far been operating on a combination of a commitment authority granted by the Advisory Committee on Administrative and Budgetary Questions of up to $2.9 million and voluntary contributions in cash or kind provided by a small number of Governments. The total pledges and contributions made to the Trust Fund for the International Tribunal for Rwanda to date are slightly in excess of $1 million. In addition, at a specially convened meeting of the Rwanda Operational Support Group in Kigali on 19 May 1995, pledges in cash and in kind in the amount of some $6 to 7 million were made. A budgetary submission for the calendar year 1995 will be presented to the General Assembly during its current session. The approval by the General Assembly of a budget for the Tribunal will greatly facilitate the operational development of the Tribunal, particularly the Prosecutor's Office, permit recruitment of personnel to take place on an accelerated basis and the necessary lease and other contractual commitments to be entered into and enable the planning of a work programme for investigation, the preparation of indictments and the holding of trials.

NATIONS UNIES

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Conseil de sécurité

Distr.
GÉNÉRALE

S/1995/533
30 juin 1995
FRANÇAIS
ORIGINAL : ANGLAIS

NOUVEAU RAPPORT PRÉSENTÉ PAR LE SECRÉTAIRE GÉNÉRAL EN APPLICATION DU PARAGRAPHE 5 DE LA RÉSOLUTION 955 (1994) DU CONSEIL DE SÉCURITÉ

I. INTRODUCTION

1. Au paragraphe 5 de la résolution 955 (1994) du 8 novembre 1994, le Conseil de sécurité m'a prié de lui présenter des rapports périodiques sur la mise en oeuvre de la résolution portant création du Tribunal international pour le Rwanda. Dans mon premier rapport daté du 13 février 1995 (S/1995/134), j'ai informé le Conseil des mesures envisagées pour l'application concrète de la résolution et ai recommandé de choisir Arusha (République-Unie de Tanzanie) comme siège du Tribunal. Le présent rapport décrit comment la mise en oeuvre de la résolution a avancé depuis mon dernier rapport, fournit des renseignements à jour sur les arrangements concernant le siège du Tribunal et dresse le bilan actuel du financement du Tribunal.

II. MISE EN APPLICATION CONCRÈTE DE LA RÉSOLUTION 955 (1994) DU CONSEIL DE SÉCURITÉ

2. Dans mon rapport du 13 février 1995, j'ai décrit une approche en deux étapes pour l'application de la résolution. Dans une première phase, un bureau chargé de l'instruction et des poursuites devait être créé à Kigali sous la supervision immédiate du Procureur adjoint, M. Honoré Rakotomanana (Madagascar), qui a pris officiellement ses fonctions le 1er mars 1995. Lors de la seconde phase, il était envisagé d'établir le siège du Tribunal à l'emplacement choisi par le Conseil.

3. L'établissement d'un bureau du Procureur à Kigali était fondé sur la décision prise par le Conseil au paragraphe 6 de la résolution 955 (1994) d'établir un bureau au Rwanda et d'y conduire des procédures si cela était possible et approprié.

4. Toutefois, pour diverses raisons, le Bureau de Kigali n'est pas encore pleinement opérationnel. En raison de la situation budgétaire incertaine, il a été difficile d'attirer et de recruter du personnel qualifié; l'effectif de base de la section du Bureau chargée de l'instruction s'est déclaré préoccupé par la sécurité des personnes et des documents; des locaux suffisants à usage d'habitation et de bureaux n'ont pas encore été trouvés. La mise en place du Bureau dans les 10 premières semaines a donc été plus difficile que prévu et jusqu'à tout récemment, aucun élément permanent n'était présent à Kigali.

5. Entre-temps, la procédure d'instruction concernant les violations graves du droit international humanitaire et les actes de génocide a été activement dirigée par le Procureur adjoint à partir de Kigali et de La Haye. L'instruction, qui porte essentiellement sur quelque 400 suspects identifiés, est effectuée à l'intérieur comme à l'extérieur du Rwanda, notamment dans d'autres pays d'Afrique, en Europe et en Amérique du Nord, où se trouvent comme on le croit les principaux instigateurs du crime de génocide. La nature de l'instruction en Europe et en Amérique du Nord nécessite une présence temporaire des enquêteurs au Bureau du Procureur à La Haye.

6. Les chances que le Bureau du Procureur à Kigali devienne pleinement opérationnel se sont quelque peu améliorées au cours des dernières semaines. Comme mon Représentant spécial en a informé le Conseil le 5 juin 1995, la situation générale à Kigali s'est améliorée; malgré les engagements de dépenses limités qui constituent l'assise actuelle du financement du Tribunal, il est maintenant possible de recruter, avec l'approbation du Contrôleur, certains membres essentiels du personnel pour une durée allant jusqu'à un an; un effectif réduit fourni à titre de contribution a été également déployé à Kigali; des locaux à usage de logements et de bureaux ont été trouvés et, par suite de la réduction des effectifs de la Mission des Nations Unies pour l'assistance au Rwanda (MINUAR), les besoins en locaux du Bureau pourront être satisfaits même si la demande devait dépasser le nombre de postes actuellement prévu. Malgré la réduction de ses effectifs, la MINUAR continuera de fournir un appui général à la sécurité du personnel et des locaux du Bureau du Procureur, conformément aux résolutions 965 (1994) et 997 (1995). Sauf difficultés imprévues d'ordre pratique ou concernant la sécurité, le Bureau de Kigali devrait maintenant accroître rapidement ses effectifs composés de personnel recruté et de personnel fourni à titre de contribution.

7. Tout en étant conscient des difficultés rencontrées jusqu'ici dans le démarrage des activités du Bureau du Procureur à Kigali, je tiens à souligner l'importance considérable que j'attache à la présence d'un bureau pleinement opérationnel à Kigali. Cette présence est non seulement prescrite par le Conseil de sécurité, mais elle est aussi impérative étant donné l'impact social et éducatif qu'elle produirait sur la population et le Gouvernement rwandais. Le Gouvernement et la communauté internationale ont souligné à maintes reprises que le problème de l'impunité des crimes commis au Rwanda devait être non seulement réglé, mais devait l'être aussi, et de façon visible, par ceux qui étaient les plus directement concernés.

8. Le fait que le Conseil de sécurité, dans sa résolution 977 (1995) du 22 février 1995, a décidé que, sous réserve que les arrangements appropriés soient conclus, le Tribunal international aura son siège à Arusha, a permis à l'Assemblée générale d'élire les six juges des Chambres de première instance les 24 et 25 mai 1995. Étant donné que les dispositions régissant le siège du Tribunal n'étaient pas encore définitivement adoptées, la première session plénière du Tribunal international pour le Rwanda s'est déroulée à La Haye du 26 au 30 juin 1995. Durant cette session, les juges ont adopté le règlement du Tribunal et ont élu Président M. Laïty Kama (Sénégal) et Vice-Président M. Yakov A. Ostrovsky (Fédération de Russie).

III. ARRANGEMENTS CONCERNANT LE SIÈGE DU TRIBUNAL

9. À la suite de l'adoption de la résolution 977 (1995) relative au siège du Tribunal, le Gouvernement de la République-Unie de Tanzanie a confirmé qu'il était prêt à accueillir le Tribunal à Arusha dans une lettre datée du 10 avril 1995 que le Représentant permanent de la République-Unie de Tanzanie a adressée au Conseiller juridique.

10. Une mission technique de l'ONU composée de représentants du Service des bâtiments et du Service des achats et des transports du Secrétariat s'est rendue à Arusha du 10 au 16 mai 1995 afin d'étudier les locaux du Centre international de conférence d'Arusha et les installations disponibles dans cette ville pour accueillir le Tribunal. La mission a examiné avec la direction du Centre international de conférence d'Arusha les arrangements qui seraient nécessaires pour obtenir des locaux appropriés. Immédiatement après, du 17 au 19 mai 1995, une mission composée de représentants du Bureau des affaires juridiques a examiné un projet d'accord de siège avec les représentants du Gouvernement et un projet de contrat de location avec les représentants du Centre international de conférence d'Arusha. Le Chef de l'administration par intérim du Tribunal a participé aux deux missions. Les discussions concernant les projets d'accord et de contrat se sont déroulées ad referendum sur la base des textes qui avaient été préalablement mis au point par le Bureau des affaires juridiques et communiqués au Gouvernement. Un relevé de conclusions concernant les deux instruments a été établi à l'issue des réunions.

11. Un certain nombre de questions restent à résoudre au sujet des deux instruments, mais elles ne sont pas jugées insurmontables. Par exemple, les questions en suspens relatives au projet d'accord de siège portent sur le rapport entre les règlements adoptés par le Tribunal et appliqués dans son enceinte et les lois et règlements de la République-Unie de Tanzanie, l'exemption de certains impôts indirects, le statut, les privilèges et les immunités du personnel du Tribunal non recruté sur le plan local, la délivrance de visas à titre gratuit et l'utilisation des titres de voyage de l'Organisation des Nations Unies. En ce qui concerne le projet de contrat de location, toutes les modalités sont soumises à l'examen et à l'approbation des services compétents de l'ONU et il conviendra de résoudre des questions telles que le montant du loyer, l'identification des locaux et le moment auquel ceux-ci seront mis à la disposition du Tribunal. D'autres conditions à remplir avant la conclusion d'un contrat de location portent sur la fourniture des fonds nécessaires ainsi que sur l'achèvement des procédures et la délivrance des autorisations requises en vertu du Règlement financier et des Règles de gestion financières de l'ONU. Il faut espérer qu'il sera possible de mettre au point dans un avenir proche un accord de siège et un contrat de location sous réserve de l'approbation nécessaire des organes compétents du Gouvernement et de l'ONU.

12. Il convient aussi de noter qu'en plus du bail, des dispositions, notamment contractuelles, devront être prises en ce qui concerne les travaux de rénovation, de construction et de réparation du Centre international de conférence d'Arusha afin d'assurer les installations nécessaires au Tribunal. Un rapport sur ces questions a été établi par un consultant en architecture et en planification engagé par l'ONU et est en cours d'examen. La conclusion d'un contrat de location et les engagements contractuels concernant les travaux de

STATUS OF THE INTERNATIONAL TRIBUNAL FOR RWANDA

With the adoption of resolution 955 on 8 November 1995, the U.N. Security Council voted for the creation of the International Tribunal for Rwanda to prosecute those individuals suspected of having committed serious violations of international humanitarian law, including the crime of genocide, in the territory of Rwanda and by Rwandan citizens responsible for such violations in the territory of neighbouring States between 1 January 1994 and 31 December 1994.

Following the initial visit of the Prosecutor of the Tribunal, Mr. Justice Richard Goldstone, to Rwanda in December 1994, efforts were undertaken in January 1995 to establish the Prosecutor's Office in Kigali, with the assistance of UNAMIR. These efforts were constrained by financial and related staffing problems. In order to address these problems, the Prosecutor called for a meeting of the Rwanda Operations Support Group, which was held in Kigali on 19 May 1995. At that meeting, approximately $6.3 million was pledged by various donors to enable the Prosecutor's Office to accelerate its investigative work and the preparation of indictments, pending finalization of the Tribunal's budget and the election of its Judges.

In that same week, a delegation comprised of representatives from the Office of Legal Affairs (OLA) in New York, the Tribunal and UNAMIR visited Arusha to discuss arrangements for the establishment of the Tribunal's headquarters there, in accordance with Security Council resolution 977 adopted on 22 February 1995. Among the members of the delegation were Mr. Ralph Zacklin, Deputy Legal Counsel (OLA) and Mr. Justice Honoré Rakotomanana, Deputy Prosecutor of the Tribunal. It emerged from their visit that it would take between six to twelve months to complete necessary refurbishment of the premises designated for the Tribunal. Additionally, several outstanding issues remain to be resolved in the negotiation of the Tribunal's Headquarters Agreement with the Government of Tanzania, as well as the Lease Agreement for the premises.

The six Judges of the two trial Chambers of the Tribunal were elected by the General Assembly in June 1995. The Judges were sworn in on 27 June and held their first meeting on 30 June, together with the five Judges of the Appeals Chamber (which is the same as that of the International Tribunal for the Former Yugoslavia). At that meeting, they elected Judge Laity Kama (Senegal) as the President of the Tribunal, and also adopted the Rules of Procedure. It is now envisaged that the Tribunal's first indictments will be made before the end of this year. However, due to the continuing problems being experienced with regard to the Tribunal's premises in Arusha, it is, as of yet, still uncertain where the initial trial proceedings will take place.

Recommendations and observations

The Secretary-General may wish to inform the Rwandese leaders that every effort was being made to enable the International Tribunal to start functioning in Arusha and in Kigali, and that he would ensure that financing and administrative arrangements are put in place as early as possible.

NOTE TO EXECUTIVE DIRECTOR

SUBJECT: The Secretary-General's report of 30 June 1995 on the International Tribunal for Rwanda

As you have requested, the following are my comments with regard to the above-mentioned report on the International Tribunal for Rwanda:

1. I do not believe that certain aspects of the report are based upon unsubstantiated information. With regard to paragraph 4, it is true that the Tribunal staff encountered various difficulties in their efforts to establish an office in Kigali with the result that, until quite recently, they had no permanent presence here. Their budgetary problems also prevented them from making any concrete plans and recruiting qualified personnel on a long-term basis. They also encountered difficulties in obtaining secure premises for their office and accomodation for their staff. However, as mentioned in paragraph 6 of the report, these obstacles have to a great extent now been overcome (the general situation in Kigali has improved; certain key personnel can now be recruited; premises for both accomodation and office needs have been located and the space requirements of their office can be met).

   Consequently, it is expected that their office in Kigali will now rapidly expand in size with a combination of recruited and contributed personnel.

2. It appears that the most major impediment towards achieving greater and more effective progress in establishing the Tribunal is due to the fact that the General Assembly has not yet approved the Tribunal's budget. Budgetary approval for the Tribunal would greatly facilitate the operational development of the Tribunal; permit recruitment of personnel to take place on an accelerated basis; allow the necessary lease and other contractual commitments to be undertaken; and enable the planning of a work programme for investigation, the preparation of indictments and the holding of trials.

Ladan M. Rafii
16 July 1995

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR-MINUAR

VISIT TO KIGALI OF THE INTERNATINAL TRIBUNAL FOR RWANDA ESTABISHMENT TEAM

(MONDAY, 23 JANUARY - 4 FEBRUARY 1995)

M. Colin PORT:	Team leader, Investigation Section, Office of the Prosecutor, The Hague
M. Gavin RUXTON:	Senior Legal Officer, Office of the Prosecutor
Ms. Catherine CISSE:	Legal Officer, Office of the Prosecutor
Ms. Carolyn EDGERTON:	Legal Officer, Office of the Prosecutor

UNAMIR Assistant Officers

Mr. Ike MINTA:	Legal Adviser, OSRSG (Rm. 4021. Ext. 11082)
Mr. Joseph LAMBARDO:	STO, Administration (Rm. 3029. Ext. 11221)

Note: This is part of the initial set-up team to begin constituting the Office of the Prosecutor for the International Criminal Tribunal for Rwanda.

During this initial establishment stages, the team will meet the Acting Chief of UNAMIR, Maj. General G. Tousignant; local and government officials, notably H.E.Mr. Nkibito, the Justice's Minister and then will visit crime scenes and other sites outside Kigali, including transit centres and refugee camps.

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Please make copy for Nuuta and Ladan. Thanks. Ilke. 26/4/95

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Security Council
Distr.
GENERAL

S/RES/989 (1995)

24 April 1995

RESOLUTION 989 (1995)

Adopted by the Security Council at its 3524th meeting,

on 24 April 1995

The Security Council,

Recalling its resolution 955 (1994) of 8 November 1994,

Having decided to consider the nominations for Judge of the International Tribunal for Rwanda received by the Secretary-General before 7 April 1995,

Establishes the following list of candidates in accordance with Article 12 of the Statute of the International Tribunal for Rwanda:

SRSG FC CAO E/DIR

Mr. Lennart ASPEGREN (Sweden)

Mr. Kevin HAUGH (Ireland)
Mr. Leity KAMA (Senegal)

Mr. T. H. KHAN (Bangladesh)

Mr. Wamalungwe MAINGA (Zambia)

Mr. Yakov A. OSTROVSKY (Russian Federation)
Mr. Navanethem PILLAY (South Africa)

Mr. Edilbert RAZAFINDRALAMBO (Madagascar)

Mr. William H. SEKULE (United Republic of Tanzania)

Ms. Anne Marie STOLTZ (Norway)
Mr. Jiri TOMAN (Czech Republic/Switzerland)

Mr. Lloyd G. WILLIAMS (Jamaica/Saint Kitts and Nevis)

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File : International Tribunal

cc ; Mr. Rafii

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: Mr. Shaharyar Khan
A: SRSG, UNAMIR
Kigali, Rwanda

DATE 21 April 1995

REFERENCE

THROUGH
S/C DE:

FROM: Ralph Zacklin, Director and
DE: Deputy to the Under-Secretary-General
Office of Legal Affairs

SUBJECT International Tribunal for Rwanda
OBJET:

1. This is in reference to your cable of 13 April 1995 to which you attached an enquiry received from UNDP/Arusha regarding the International Tribunal for Rwanda, and more particulary, the election of judges, appointment of a registrar, the budget and premises of the Tribunal and the approximate date of its first session.

A. Election of judges

2. On 7 March 1995, the Legal Counsel invited on behalf of the Secretary-General all States Members of the United Nations and non-Member States maintaining permanent observer missions at United Nations Headquarters to nominate, within 30 days of the date of invitation, candidates for judges of the International Tribunal. On 10 April 1995 the Secretary-General transmitted, in accordance with Article 12 of the Statute of the Tribunal a list of 21 nominees received by 7 April 1995.

3. According to Article 12 of the Statute the election of the judges will take place in two-stages. In the first stage the Security Council will establish from the nominations received a list of not more than eighteen and not less than twelve nominations, and forward the list to the General Assembly. From the list submitted to it, the Assembly shall then elect six judges. The Security Council is expected to establish the short list of candidates by early next week.

B. Appointment of a Registrar

4. A Registrar has not yet been appointed. We note that according to Article 16 of the Statue of the Tribunal, the Registrar will be appointed by the Secretary-General upon recommendation of the President of the Tribunal. The President will be elected by the judges, in accordance with Article 13(1) of the Statute, probably at their first session.

5. A core Administrative Unit has been established in UN Headquarters. It presently consists of a Chief Administrative Officer and two auxiliary staff. Recruitment of additional staff (financial and personnel officers) is now underway. It is anticipated that the Administrative Unit will be relocated to the Prosecutor's Office in Kigali and later to the seat of the Tribunal in Arusha.

C. Financing of the Tribunal

6. The Advisory Committee on Administrative and Budgetary Questions (ACABQ) having considered the request for spending authority for the start-up costs of the establishment of the International Tribunal, has authorized the Secretary-General to enter into commitments of up to $2,914,900 for the period of 1 January to 31 March 1995, pending the preparation of a full budgetary submission.

D. Premises of the Tribunal

7. In a letter of 10 April 1995, the Government of the United Republic of Tanzania confirmed its willingness to host the seat of the International Tribunal at Arusha and to receive a United Nations mission to discuss the practical and legal arrangements pertaining to the establishment of the Tribunal. Drafts of the Headquarters Agreement and the Lease Agreement were forwarded to the Government of Tanzania for comments. During the second and third weeks of May 1995 a UN technical-legal mission is scheduled to arrive at Arusha to survey the space availability, communication facilities etc. and to conclude the aforementioned legal instruments pertaining to the establishment of the Tribunal.

8. The date for the commencement of trial proceedings cannot evidently be ascertained at this point. It is anticipated, however, that the judges will convene for an extraordinary session soon after their election and before taking of office, in order to adopt their Rules of Procedure and Evidence.

cc. Ms. Elisabeth Lindenmayer

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ATTER/REDACTEUR: Zacklin | DEPT.: Legal | ROOM / BUREAU: 3427 | EXT. / POSTE: 5342

12 PITCH - 65/12 | 10 PITCH - 65/10

DO NOT TYPE BEYOND THE MARGINS - SEE INSTRUCTION ON THE REVERSE SIDE — N'INSCRIVEZ RIEN DANS LES MARGES - VOYEZ LES INSTRUCTIONS AU VERSO

A rough letter; can we answer questions 1-4? gdg 22.4

Mr. Richard Goldstone
Prosecutor
International Criminal Tribunal
for the former Yugoslavia
The Hague

Fax No. 31 70 344 5345

Mr Nsuta

Mr. Goldstone,

Thank you for your fax of 18 April in which you proposed revised dates for the visit of Mr. Rakotomanana, Mr. Bort and yourself. As far as my own schedule is concerned I can accommodate myself to these dates although as of 28 April I shall be in charge of the Office and therefore less available for meetings. However, it is important that you identify clearly the subjects you wish to discuss since Mr. Gilli will require this information in order to set up meetings with appropriate officials in departments other than the Office of Legal Affairs.

I should also like to raise with you the following matter. In recent weeks we have been receiving numerous inquiries from various quarters including Member States, United Nations agencies and NGOs regarding the failure to implement Security Council resolution 955 and the Secretary-General's reports on its implementation. Since we do not have a clear picture of what has transpired to delay the establishment of an Office of the Prosecutor in Kigali I would be grateful if, in order to assist us in responding to such queries you could let me have the following information:

1) How many staff members of all grades are presently on the manning table of the Office of the Prosecutor for Rwanda?

2) Where are these people presently located? Hague.

1 of 2

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//// INT. TRIBUNAL

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SIGNATURE

DATE: 21 April 1995

R. Zacklin, Director and Deputy to the USG, OLC

NAME AND TITLE (PLEASE TYPE) / NOM ET QUALITE (A DACTYLOGRAPHIER)

COM.? :-87.

KIGALI RWANDA 95- 4-21 20:04 2129036439 COMMCEN 2

UNITED NATIONS NATIONS UNIES **TELEGRAPH**

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12 PITCH - 65/12 → 10 PITCH - 60/10 →

3) Is there a representative of this Office in Kigali at the present time and if so at what level? Nowl.

4) What is your present expectation for the deployment of the Office of the Prosecutor in Kigali as foreseen in the Secretary-General's report pursuant to paragraph 5 of Security Council resolution 955 (1994) (S/1995/134 of 13 February 1995).

For our part, whenever these questions have been raised with us we have responded that the difficulties relating to the establishment of anything more than an occasional presence in Kigali of the Prosecutor Office is due to practical and logistical problems such as lack of accommodation. However, this argument seems to be wearing rather thin since the information we are receiving from the field indicates that both private and office accommodation is available. Furthermore, we have made it clear to all our interlocutors that as far as this Office is concerned we are proceeding on the basis of the existing mandates of the Security Council which in resolution 955 has decided that an office will be established in Rwanda and in resolution 977 that the seat of the Tribunal should be in Arusha, it being clearly understood that the seat is the location of the trial chambers.

Regards,

Ralph Zacklin
Director and Deputy
to the Under-Secretary-General
Office of the Legal Counsel

cc: Mr. Corell
Mr. Connor
~~Mr. Khan, Kigali~~

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DATE: 21 April 1995

R. Zacklin, Director and Deputy to the USG, OLC

NAME AND TITLE (PLEASE TYPE) / NOM ET QUALITE (A DACTYLOGRAPHIER):

UNITED NATIONS NATIONS UNIES
ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR - MINUAR

NOTE VERBALE URGENT

SRSG/NV/40/95

La Mission des Nations Unies pour l'Assistance au Rwanda (MINUAR) présente ses compliments au Ministère des Affaires Etrangères et de la Coopération Internationale de la République Rwandaise, se refère à ses notes verbales nos. 34 et 38 des 9 et 17 mars 1995 et confirme l'arrivée ce jour 21 mars 1995 à Kigali du Substitut du Procureur Général, le Juge Honoré Rakotomanana, près le Tribunal Pénal International sur le Rwanda par le vol de la MINUAR de 9 heures. Le retard survenu dans son arrivée à Kigali est dû à une malencontreuse circonstance qui a empêché l'avion le transportant de joindre Nairobi, Kenya, le dimanche 19 mars 1995. Il séjournera à Kigali jusqu'au Vendredi 24 mars 1995, se rendra à la Haye, Pays Bas, pour rencontrer le Procureur Général Richard Goldstone, avant de revenir à son poste au Rwanda.

Le Substitut du Procureur Général réitère son souhait d'obtenir au cours de son séjour une audience avec les Autorités gouvernementales ci-après à un moment de leur convenance que le Ministère des Affaires Etrangères saurait gré de bien vouloir nous communiquer en temps opportun.

Il s'agit de :

- S.E. M. le Vice-Premier Ministre et Ministre de la Fonction Publique: Colonel Alexis Kanyarengwe
- S.E. M. le Ministre des Affaires Etrangères: M. Anastase Gasana
- S.E. M. le Ministre de l'Intérieur: M. Seth Sendashonga
- S.E. M. le Ministre de la Réhabilitation: Dr. Jacques Bihozagara

La Mission des Nations Unies au Rwanda regrette le contre-temps survenu concernant l'objet de ses notes verbales précitées. Elle saisit cette occasion pour renouveler au Ministère des Affaires Etrangères et de la Coopération Internationale de la République Rwandaise les assurances de sa très haute considération.

Fait à Kigali, le 21 mars 1995

UNITED NATIONS UNAMIR

Ministère des Affaires Etrangères
et de la Coopération Internationale
de la République Rwandaise
KIGALI

ing signatory states to avoid recourse to war between themselves in any case or against a state which, taking advantage of the possibility, accepts the obligations resulting from the Protocol – except in the case of repelling acts of aggression or acting with the agreement of the Council or LN Assembly. The Protocol also contained an obligation on the signatories to *ipso facto* recognize the binding jurisdiction of the Permanent Court of International Justice, PCIJ on questions mentioned in art. 26 of the statute of the Court and also obligated the signatories to take the proper measures to effectively fulfill the obligations resulting from art. 15 of the Covenant of the League. The Protocol never took effect, though it was signed by 19 states, since it was rejected by the new British conservative government.

J.T. SHOTWELL, "Protocol for the Pacific Settlement of International Disputes. Text and Analysis", in: *International Conciliation*, No. 205, December, 1924; D.H. MILLER, *The Geneva Protocol*, New York, 1925.

GENEVA PROTOCOL, 1925. The Protocol for the Prohibition of the Use in War of Asphyxiating Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed in Geneva, June 17, 1925, by the Governments of Austria, Belgium, Brazil, the British Empire, Bulgaria, Canada, Chile, Colombia, Czechoslovakia, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Greece, Hungary, India, Italy, Ireland, Japan, Latvia, Lithuania, Luxembourg, the Netherlands, Nicaragua, Norway, Panama, Poland, Portugal, Romania, Siam, Spain, Sweden, Switzerland, the Serbo-Croat-Slovene State, Turkey, the USA, Uruguay and Venezuela. Accessions: Liberia (1927), USSR (1929), Persia (1929), China (1929), the Union of South Africa (1930), Australia (1930), New Zealand (1930). The text as follows:

"Protocol on Abolition of Lethal and Other Gases.
The undersigned Plenipotentiaries, in the names of their respective governments:
Whereas the use in war of asphyxiating poisonous or other gases and of all analogous liquids, materials or devices has been justly condemned by the general opinion of the civilized world and –
Whereas the prohibition of such use has been declared in Treaties to which the majority of powers of the world are parties and –
To the end that this prohibition shall be universally accepted as a fact of international law, binding alike the conscience and the practice of nations:
Declare –
That the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration.
The High Contracting Parties will exert every effort to induce other states to accede to the present Protocol. The present Protocol will come into force for each signatory Power as from the date of deposit of its ratification, and from that moment, each Power will be bound as regards other Powers which have already deposited their ratification."

The Protocol was ratified until Jan. 1, 1987 by 111 countries.

LNTS, Vol. 94, pp. 65–74; *SIPRI, Yearbook 1987*, Oxford, 1988, p. 461.

GENEVA TRACING BUREAU. The Main Tracing Bureau of the International Committee of the Red Cross (formerly Main Bureau for War Prisoners, headquarters in Geneva), provides information on war prisoners. Address: Agence Centrale de Recherches du CICR, Avenue de la Paix CH-1211, Genève, Switzerland.

GENEVA ZONES – LIEUX DE GENÈVE. An international term introduced in 1931 by the International Organization for Protection of Civilian Population during the War for definition of the areas of war operations in which the Red Cross Geneva rules on ▷ civilian persons protection in time of war or in military conflicts are in force.

GENOA ECONOMIC CONFERENCE, 1922. The first International Economic Conference held in Genoa, Apr. 10–16, 1922; it was preceded by a French–British meeting in Cannes, Jan. 6–13, 1922; no resolutions were passed, but the Conference was used by German and USSR delegations for the preparation of the bilateral ▷ Rapallo Treaty, 1922.

GENOCIDE. *Greek*: genos = "clan", "family", *Latin*: occidio = "total extinction", "extermination". A new word, applied in international law after World War II, coined and defined ("Genocide is the crime of destroying national, racial or religious groups") by a Polish lawyer, R. Lemkin (1900–60), who in 1933 called for an international convention, banning mass executions, to be prepared. The first initiative to "recognize extermination of racial, religious or social groups as an offence against the law of nations" (*Delictum ius gentium*) was taken up by the Fifth International Conference on Unification of Penal Law held in Madrid in 1933. For the first time the genocide crimes were officially described in the indictment of major German war criminals at the Nuremberg Trials in 1945 as:

"intended and systematic *genocidio*, that is extermination of racial and national groups of civilian population in certain occupied territories in order to destroy certain races and layers of nations and peoples, racial and religious groups, in particular Jews, Poles, Gypsies and other."

Under Res. 96/I of Dec. 11, 1946, the UN General Assembly initiated work on a draft Convention on the Prevention and Punishment of the Crime of Genocide unanimously approved Dec. 9, 1948. Under Res. 960-B/III of Dec. 9, 1948, the UN General Assembly recommended a study of the possibility of establishing an International Penal Court to try cases of genocide and other crimes against mankind determined under conventions, or a Penal Chamber in the International Court of Justice. On the same day, under Res. 260-C/III, the UN General Assembly ordered the states exercising control over non-self-governing territories to expand as soon as possible the provisions of the Convention on such territories. In reply to the UN General Assembly's Res. 478/V, May 28, 1951, the International Court of Justice issued its opinion concerning the Convention.

R. LEMKIN, *Les actes créant un danger général, considérés comme délits de droit de gens*, Paris, 1933; *Actes de la V Conférence International pour l'Unification du Droit Penal*, Paris, 1935; R. LEMKIN, *Axis Rule in Occupied Europe*, Washington, DC, 1944; R. LEMKIN, "Genocide: A New International Crime 1944", in: *Revue Internationale de Droit Pénal*, Paris, 1946; UN, *The Crime of Genocide. A United Nations Convention*, New York, 1959; N. ROBINSON, *La Convención sobre Genocidio*, Buenos Aires, 1960; TH. HOLTON, *An International Peace Court. Design for a move from State Crime toward World Law*, The Hague, 1970; H. SARON, *Du cannibalisme au genocide*, Paris, 1972; R. JAY LIFTON, *The Nazi Doctors: Medical Killing and the Psychology of Genocide*, New York, 1986.

GENOCIDE CONVENTION, 1948. The Convention on the Prevention and Punishment of the Crime of Genocide adopted unanimously by the UN General Assembly on Dec. 9, 1948 came into force on Jan. 12, 1951. It was ratified by the majority of states, including three Great Powers: France on Oct. 14, 1952, the People's Republic of China on July 19, 1958 and the USSR on May 3, 1954. The Convention was also signed by the USA but not ratified by the US Senate by argument that is poorly drafted and could allow other Governments to intervene in US affairs. On Oct. 16, 1984 the Senate again rejected ratification but in a resolution expressed its support, 87:2, "for the principles embodied in the Convention". The official texts are in Chinese, English, French, Russian and Spanish. The text is as follows:

"The Contracting Parties, having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;
Recognizing that at all periods of history genocide has inflicted great losses on humanity; and
Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,
Hereby agree as hereinafter provided:
Art. 1. The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.
Art. 2. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.
Art. 3 The following acts shall be punishable:
(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.
Art. 4. Persons committing genocide or any of the other acts enumerated in Art. 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.
Art. 5 The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in Art. 3.
Art. 6. Persons charged with genocide or any of the other acts enumerated in Art. 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.
Art. 7. Genocide and the other acts enumerated in Art. 3 shall not be considered as political crimes for the purpose of extradition.
The contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.
Art. 8. Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as the consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Art. 3.
Art. 9. Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Art. 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.
Art. 10. The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Art. 11. The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly. The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.
Art. 12. Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.
Art. 13. On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in Art. 11.
The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.
Any ratification or accession effected subsequent to the latter day shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.
Art. 14. The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.
It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.
Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.
Art. 15. If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.
Art. 16. A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General. The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.
Art. 17. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Art. 11 of the following:
(a) Signatures, ratifications and accessions received in accordance with Art. 11;
(b) Notifications received in accordance with Art. 12;
(c) The date upon which the present Convention comes into force in accordance with 13;
(d) Denunciations received in accordance with Art. 14;
(e) The abrogation of the Convention in accordance with Art. 15;
(f) Notifications received in accordance with Art. 16.
Art. 18. The original of the present Convention shall be deposited in the archives of the United Nations.
A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in Art. 11.
Art. 19. The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force."

UNTS, Vol. 78, pp. 277–323; W. KORREY, "The Genocide Treaty: Unratified 35 years Embarrassment for the US", in: *New York Times*, June 23, 1984; *International Herald Tribune*, October 17, 1984.

GENTLEMEN'S AGREEMENT. An international term for a specific type of international agreement not made in written form, but orally, yet fully valid legally; a distinction is made between open gentlemen's agreements and secret diplomatic agreements. In the USA in 1890 a prohibition was introduced against gentlemen's agreements in commercial relations between states, since by its nature a secret agreement is not subject to anyone's control.

GEODESY AND GEOPHYSICS. A subject of international co-operation. Organizations reg. with the UIA:

European Association of Exploration Geophysicists, f. 1951, The Hague. Publ.: *Geophysical Prospecting*.
International Union of Geodesy and Geophysics, IUGG, f. 1919, Brussels; recognized by ICAO, special arrangement with WMO and ECOSOC. Members: seven constituent international associations: International Association of Geodesy, f. 1862, Paris; International Association of Geomagnetism and Aeronomy, f. 1919, Tokyo; International Association of Meteorology and Atmospheric Physics, f. 1919, Boulder, USA.; International Association for the Physical Sciences of the Ocean, f. 1919, Victoria, British Columbia; International Association of Hydrological Science, f. 1922, Dublin; International Association of Seismology and Physics of the Earth's Interior, f. 1901, Boston; International Association of Volcanology and Chemistry of the Earth Interior, f. 1919, Leeds;
and 71 adhering countries represented by governments, scientific academies or departments. Publ.: *IUGG Chronicle* (monthly), *IUGG Monographs* (occasional).
Yearbook of International Organizations.

GEOGRAPHICAL NAMES. A subject of international unification since 1967. The First Conference for Unification of Geographical Names was held under the aegis of the UN in Geneva, 1967, with experts from 54 countries participating. It appointed a Permanent Commission of UN Experts for Geographical Names. The Second Conference was held in Geneva in 1970, the Third in 1980.

GEOGRAPHICAL REPRESENTATION. The term adopted by the UN for the subject of a gentlemen's agreement, concluded by the big powers in the UN Preparatory Commission in London in Nov., 1945, to the effect that the non-permanent members of the Security Council shall be elected on the basis of geographical representations; one from Eastern Europe, one from Western Europe, two from the (British) Commonwealth and two from Latin America. The UN General Assembly approved the principle of geographical representation in Res. 153/II of Nov. 15, 1947. This arrangement was broken the following year, when no representative of Eastern Central Europe was elected. In 1959, Czechoslovakia submitted to the UN General Assembly Political Committee a proposal on "the application of the geographical representation principle in electing the President of the UN General Assembly", but on Dec. 10, 1959 the Assembly defeated the proposal by a vote of 40 against, 36 for and 6 abstaining. In 1960, the Third World countries, together with the socialist countries, protested against the non-application of the geographical representation principle in all UN bodies and specialized agencies by Res. 1559/XV of Dec. 18, 1962 and Res. 1928/XVIII of Dec. 11, 1963; these states also requested that the composition of the UN Secretariat be in keeping with the criterion of the geographical representation. In 1964–66 the UN General Assembly increased the number of Security Council members and of ECOSOC, so as to provide for a fuller geographical representation of different regions of the world.

UN Review, No. 1, 1964; *UN Monthly Chronicle*, No. 12, 1966.

GEOGRAPHY. A subject of international co-operation. Organizations reg. with the UIA:

Commonwealth Geographical Bureau f. 1968, London.
International Geographical Union f. 1947, Freiburg in Breisgau. Consultative status with ECOSOC, liaison status with FAO, recognized by ICAO. Commissions on: History of Geographical Thought; International Geographical Terminology; Geographical Education; Geographical Data Sensing and Processing; Environmental Problems; Geomorphological Survey and Mapping; Field Experiments in Geomorphology; International Hydrological Program; Geography of Transport; Population Geography; National Settlement Systems; Agricultural Productivity and World Food Supplies; Rural Development; Coastal Environmental Industrial Systems; Regional Systems and Policies. IGU Working Groups on: Geography of Tourism and Recreation; Desertification in and Around Arid Lands; Market Distribution Systems; Cartography of the Dynamic Environment; Applied Aspects of Geography; Environmental Atlases (jointly with ICA); Geography of Health; Systems Analysis and Mathematical Models; Perception of the Environment; Coordination of Periglacial Research. Members: National Committees. Publ.: *The IGU Bulletin* (twice a year).
International Society of Geographic Ophthalmology, f. 1970, Montreal.
Panamerican Institute of Geography and History, f. 1928, Mexico City.
Yearbook of International Organizations.

GEOLOGY. A subject of international co-operation. The First International Geological Congress took place in Buffalo, 1875. Organizations reg. with the UIA:

African Regional Committee for Geology, f. 1962, Dakar.
Association of African Geological Surveys, f. 1929, Paris, France. Publ.: *Géologie Africaine*.
Association of Geoscientists for International Development, f. 1974, Bangkok, Thailand.
CMEA Geological Commission, f. 1963, Ulan Bator.
Commonwealth Committee on Mineral Resources and Geology, f. 1948, London.
International Association of Engineering Geology, f. 1964, Paris.
International Association of Mathematical Geology, f. 1968, Syracuse.
International Association of Quaternary Research, f. 1928, Brussels.
International Union of Geological Sciences, f. 1961, Haarlem.
Yearbook of International Organizations, *1986/87*; *The Europa Yearbook 1988. A World Survey*, Vol. I, London, 1988.

GEOPHYSICAL YEAR, INTERNATIONAL, 1957. The International Geophysical Year of 1957 was initiated by the International Union of Scientific Academies; and approved by the UN General Assembly in 1955. For scientific and technical reasons it lasted for more than a year, from 1 July 1957 to 30 June 1959. For the first time international scientific research encompassed the earth's surface, its interior and its atmosphere; 5000 scientists from 48 countries participated. The first International Geophysical Year was organized 1882–3 for exploration of the North Pole; the second 1932–3 for the South Pole.

UN Review, No. 259, pp. 38–42, 1957.

GEOPOLITICS. An international term formulated during World War I by the Swedish Pan-Germanist R. Kjellen, who attempted to show a close relationship between the geographical conditions of a state and its policy; the term was abused by the geopoliticians of the German III Reich to justify the necessity for expanding "living space". ▷ Lebensraum.

K. HAUSHOFER, *Bausteine zur Geopolitik*, München, 1928; G. BAKKER, *Deutsche Geopolitik 1919–1945*, Berlin W., 1968.

UNITED NATIONS NATIONS UNIES
ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR - MINUAR

NOTE VERBALE

SRSG/NV/37/95

La Mission des Nations Unies pour l'Assistance au Rwanda (MINUAR) présente ses compliments au Ministère des Affaires Etrangères et a l'honneur de l'informer de la prochaine visite au Rwanda du Juge M. Rakotomanana, Substitut du Procureur Général, près le Tribunal International pour le Rwanda. M. Rakotomanana arrivera à Kigali dans la matinée du 20 mars 1995 par le vol de la MINUAR en provenance de Nairobi. Il quittera Kigali le 23 mars 1995.

Le Substitut du Procureur Général souhaite obtenir, dans la période du 20 au 22 mars 1995 une audience avec les Autorités suivantes:

- S.E. M. le Vice-Président de la République et Ministre de la Défense:
  Gen. Maj. Paul Kagamé
- S.E. M. le Vice-Premier Ministre et Ministre de la Fonction Publique:
  Colonel Alexis Kanyarengwe
- S.E. M. le Ministre des Affaires Etrangères: M. Anastase Gasana
- S.E. M. le Ministre de l'Intérieur: M. Seth Sendashonga
- S.E. M. le Ministre de la Réhabilitation: Dr. Jacques Bihozagara

La Mission des Nations Unies au Rwanda saurait gré au Ministère des Affaires Etrangères de bien vouloir lui faire savoir en temps opportun la possibilité pour le Substitut du Procureur Général de rencontrer les hautes personnalités gouvernementales citées ci-dessus.

La Mission des Nations Unies au Rwanda regrette le contre-temps survenu concernant l'objet de sa note verbale No. SRSG/NV/34/95. Elle saisit cette occasion pour renouveler au Ministère des Affaires Etrangères et de la Coopération Internationale de la République Rwandaise les assurances de sa très haute considération.

Fait à Kigali, le 17 mars 1995

UNITED NATIONS
UNAMIR

Ministère des Affaires Etrangères
et de la Coopération Internationale
de la République Rwandaise
KIGALI

UPDATE: INTERNATIONAL TRIBUNAL FOR RWANDA

During the period since 23 January 1995 when the Office of the Prosecutor for the International Tribunal for Rwanda was established in Kigali, Tribunal staff have been gathering documents, information and evidence from a number of sources both in Rwanda and other countries. The evidence gathered by the High Commissioner for Human Rights is currently being handed over to the Tribunal and it is anticipated that this work will be completed by 31 March 1995. Recruitment of staff is taking place and prospective international candidates for the Tribunal are being sought.

A number of governments are actively involved in searching for suitable staff to be seconded to the Tribunal and it is hoped that these people will start to join the Office of the Prosecutor in late March 1995. Additionally, governments have pledged financial and technical support to the Tribunal and this will greatly assist in the efficiency and effectiveness of its work. An investigative strategy has been devised and this will centre upon investigating those individuals principally responsible for the planning, commission and incitement of crimes covered by the Statute of the Tribunal.

Following adoption of resolution 977 on 22 February 1995, the Security Council decided that the seat of the Tribunal should be in Arusha. A team comprised of the Special Representative, Deputy Prosecutor of the Tribunal and staff from the Department of Legal Affairs wil visit the United Republic of Tanzania in April 1995 to seek agreements with the Tanzanian Government regarding the needs of the Tribunal. In the mean time, the Tribunal will continue to gather and assess evidence obtained for purposes of seeking indictments against those individuals suspected of involvement in the recent genocide in Rwanda.

13 March 1995

UNITED NATIONS NATIONS UNIES
ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR - MINUAR

INTEROFFICE MEMORANDUM

TO: Ambassador M. Conde
Acting Chief of Protocol

FROM: Ladan M. Rafii
Political/Legal Officer

DATE: 6 March 1995

SUBJECT: Proposed visit of SRSG to Arusha

This morning I received a telephone call (transferred from the SRSG's office) from the UNDP Deputy Resident Representative in Dar-es-Salaam regarding the anticipated arrival date of the SRSG to Arusha. I informed him that his proposed visit had been rescheduled from 8-10 March to next week due to changes in the travel itinerary of the Deputy Prosecutor of the International Tribunal, Mr. Honore Rakatomanana. I stated that, based upon information provided by the SRSG, the visit was now tentatively scheduled for 16-17 March, but that he should contact our office later in the week for confirmation of the exact dates. He was pleased with this postponement as he believed it would be a more opportune time for the SRSG to meet with various Government officials in Tanzania.

cc: SRSG

UNITED NATIONS

INTERNATIONAL TRIBUNAL FOR THE PROSECUTION
OF PERSONS RESPONSIBLE FOR GENOCIDE AND
OTHER SERIOUS VIOLATIONS OF
INTERNATIONAL HUMANITARIAN LAW COMMITTED
IN THE TERRITORY OF RWANDA,
BETWEEN 1 JANUARY 1994 AND 31 DECEMBER 1994

NATIONS UNIES

TRIBUNAL PÉNAL INTERNATIONAL CHARGÉ DE
POURSUIVRE LES PERSONNES PRÉSUMÉES
RESPONSABLES DU GÉNOCIDE ET D'AUTRES
VIOLATIONS GRAVES DU DROIT
INTERNATIONAL HUMANITAIRE COMMISES
SUR LE TERRITOIRE DU RWANDA,
ENTRE LE 1ER JANVIER 1994 ET LE 31 DÉCEMBRE 1994

Aegon Building, Churchillplein 1, 2501 EW The Hague, The Netherlands Telephone: 31 70 344-5347 Fax: 31-70 344-5345
UNAMIR OFFICE, Kigali, Rwanda

MEMORANDUM

we are arranging a visit to Arusha around 15/16

TO : His Excellency Ambassador Shahyrar Khan

FROM : Colin Port

DATE : Friday 3 March 1995

SUBJECT : **ARRIVAL OF DEPUTY PROSECUTOR IN KIGALI**

Further to our telephone conversation earlier today, by way of this memorandum I wish to confirm that Justice Rakotomanana will arrive on the UNAMIR flight in Kigali on the morning of Monday 13 March 1995. Accommodation permitting, Justice Rakotomanana intends to spend some time in Rwanda before travelling to The Hague to liaise with Justice Goldstone.

I confirm that I think it is appropriate that Justice Rakotomanana visits Arusha at an early opportunity and I know that he would be delighted to join you on the 14th or 15th of March.

I am extremely grateful for your continued help and assistance.

UNITED NATIONS

INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR GENOCIDE AND OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF RWANDA, BETWEEN 1 JANUARY 1994 AND 31 DECEMBER 1994

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Aegon Building, Churchillplein 1, 2501 EW The Hague, The Netherlands Telephone: 31 70 344-5347 Fax: 31-70 344-5345
UNAMIR OFFICE, Kigali, Rwanda

10 March 1995

UPDATE : INTERNATIONAL TRIBUNAL FOR RWANDA

Unfortunately, there were some inaccurate comments in the Secretary-General's report dated 6 February 1995 and I shall try and rectify the situation in this briefing note.

The Office of the Prosecutor for the International Tribunal for Rwanda was established on 23 January 1995 in Kigali and during the ensuing weeks Tribunal staff have been gathering documents, information and evidence from a number of sources both in Rwanda and other countries. The evidence gathered by the High Commissioner for Human Rights is currently being handed over to the Tribunal and it is anticipated that this work will be completed by 31 March 1995.

Recruitment of staff is taking place and during the next few weeks an international advertisement will be placed in a number of newspapers seeking prospective candidates for the Tribunal.

A number of governments are actively involved in searching for suitable staff to be seconded to the Tribunal and it is hoped that these people will start to join the Office of the Prosecutor in late March 1995. Additionally, governments have pledged financial and technical support to the Tribunal and this will greatly assist in the efficiency and effectiveness of its work.

An investigative strategy has been devised and this will centre upon investigating those individuals who were principally responsible for the planning, commission and incitement of crimes covered by the Statute of the Tribunal.

Following the decision of the Security Council that Arusha will be the seat of the Tribunal, a number of personnel from the Office of the Special Representative, the Department of Legal Affairs and the Tribunal will visit the United Republic of Tanzania in April 1995 to confirm Memoranda of Understanding with the government and the future needs of the Tribunal.

It is anticipated during the next three months the Office of the Prosecutor will continue to gather and assess information and evidence obtained from sources within Rwanda and elsewhere.

→ 16/17 March

AIDE MEMOIRE

From: I. Minta

To: Amb. M. Conde

Re: SRSG's trip to Arusha

March 1, 1995

The SRSG had originally planned to visit Arusha in February to inspect the proposed premises of the International Tribunal for Rwanda. But the UNDP Resident Co-ordinator in Dar suggested that the visit take place after 16 March because Parliament is in session in Dodoma and senior Government Officials would be unavailable.

Now the SRSG wants to undertake that trip next week, with Mr Honore Rakotomanana, the Deputy Prosecutor of the Tribunal. He does not mind if they are not met by a Senior Government Official, so long as someone from State Protocol or other appropriate Office is able to meet them and show them around. He would like the trip to be arranged for any day from 8th to 10th March. As Ms Rivero as well as myself will be away, the SRSG and Mr Rakotomanana are to be accompanied by Ms Ladan Rafii.

It will be greatly appreciated if the necessary arrangements could be made with State Protocol or Foreign Affairs in Dar.

cc : Issel,
Ladan

Ms Rafii

NOTE POUR LE DOSSIER

Entrevue de 11h00 à 12h00 avec MM. Andreas SCHIESS (Suisse) et Todd HOWLAND respectivement Chargé de la Section d'Investigation Spéciale et de la Section Coopération Technique, UNHCHR (Section Spéciale du Haut-Commissariat aux Droits de l'homme)

Tel: 729 39

Contact Radio: HRI - Canal 8
Ambassade de Suisse: Tel: 757 38
Fax: 724 61

Ref: Visite à Kigali; 19-20 décembre 1994 du Procureur Goldstone, Tribunal Pénal International pour l'Ex-Yougoslavie et pour le Rwanda, La Haye, Pays-Bas.

But: S'enquérir de façon détaillée des préparatifs de la visite sus-mentionnée dont ils sont chargés de coordonner avec la MINUAR.

A l'issue des échanges d'information, il est retenu ce qui suit:

- Envoyer une Note Verbale au Minaffet pour demandes d'audiences aux autorités locales (voir Note Verbale No [redacted]-71/94 pour la liste des personnalités à rencontrer.

- Copier cette Note à MM. SCHIESS et HOWLAND à Kigali et aussi à M. KINIGER, Relations Extérieures, CIJ, La Haye, Pays-Bas,
Tel: 0031-70-344 5353
Fax: 0031-70-344 5358

- MM. SCHIESS et HOWLAND prendront langue avec M. Charles PETRIE, UNREO en ce qui concerne la rencontre avec les ONGs et en informeront M. Dessandé.

- Afin de briefer le Procureur, MM. HOWLAND et SCHIESS se rendront à Nairobi le 17 décembre 1994.

- Dr. KABIA les a reçus brièvement et a approuvé leur voyage sur le vol MINUAR du 17 décembre 1994 Kigali-Nairobi et du 19 décembre 1994 Nairobi-Kigali. Le dossier approuvé est remis en mains propres à M. Kel Gleeson, Chef des Opérations Aériennes.

- Hébergement: Réserver au Village belge 2 Suites pour la délégation. Le nécessaire est fait mais M. HOWLAND doit contacter M. KINIGER à ce sujet.

- Ce jour 14 décembre M. Abderrazak ESSAIED, Adjoint au Coordonnateur des Droits de l'Homme m'a rendu visite et s'est enquis du statut du programme de visite du Procureur. Une copie de la Note Verbale No 71/94 lui est remise.
Il suggère que le CDH et UNREO prennent langue pour proposer l'organisation d'une seule réunion pour les deux groupes.

Il indique aussi que si le Premier Ministre reçoit le Procureur avec les autres Ministres, il est important q'un moment soit prévu pour que le Procureur discute avec le Ministre de la justice seul.

14 décembre 1994
B. P. Dessandé

DISTRIBUTION:

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RECEIVED
25 SEP 1995
OFFICE OF THE SRSG
UNAMIR

UNITED NATIONS NATIONS UNIES
ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR - MINUAR

NOTE TO SRSG

1. As requested, I am writing to provide greater clarification on the Note I sent to you regarding the legal implications of resolution 978 (please see attached).

2. I have been informed by Ms. Daphne Schraga from the Office of Legal Counsel in New York that resolution 978 was intended to be a provisional measure to ensure that suspects being pursued by the International Tribunal for Rwanda (ITR) would not disappear pending the preparation of formal indictments, since the ITR was not yet functioning at the time the resolution was adopted (that is, February 1995).

3. Contrary to what I stated in paragraph 5 of my last memorandum on the subject, resolution 978, being a Security Council resolution, is legally binding upon all Member States. However, since it was not passed under the Council's Chapter VII powers, there are no enforcement mechanisms to ensure such compliance. That is, should Zaire decide not to comply with the provisions of the resolution, the Council cannot impose enforcement measures. Consequently, the Council has no recourse in the event a Government wishes to pursue dilatory tactics.

4. As stated before, the standard for "sufficient evidence" is to be determined according to the legal procedures of the country in which the suspect is residing. Apparently, the phrase was deliberately left vague due to the different systems of administration of criminal law in civil law and common law jurisdictions. A list prepared by the Rwandese Government could be indicative, but it would not constitute sufficient evidence as the basis for arrest. In this connection, it would be advisable to gain familiarity with the Zairean justice system to ascertain the precise legal standards and procedures for seeking the detention of a criminal suspect in Zaire.

5. The phrase "and relevant standards of international law" was included to ensure a minimum and basically acceptable standard of treatment for the accused in accordance with international law, should national standards fall below international norms. The focus was on safeguarding the suspect's right to a fair trial, legal counsel, public hearing, etc. and refers to international instruments such as international conventions and General Assembly resolutions pertaining to due process, conditions of detention, humane treatment, etc. Apparently, it has no bearing on what constitutes "sufficient evidence."

Ladan M. Rafii
Political/Legal Officer
25 September 1995

This is a good note. Pl. discuss.
Shabney J. Silver
25/9

Ladan R.

UNITED NATIONS NATIONS UNIES
ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR - MINUAR

NOTE TO SRSG

1. As you requested, I am writing to inform you of the legal implications of resolution 978 which, inter alia:

> Urges States to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda.

2. In resolution 955, the Security Council acted under Chapter VII powers in establishing the International Tribunal for Rwanda (ITR). As such, all States are required to cooperate fully with the ITR, including the obligation to comply with requests for assistance or orders issued by the Trial Chamber under Article 28 of the Statute. This includes, but is not limited to, the identification and location of persons; the taking of testimony and the production of evidence; the service of documents; the arrest or detention of persons; and the surrender or transfer of the accused to the ITR.

3. Although the obligation of States vis à vis the ITR is clearly delineated in the Security Council resolutions, the matter is somewhat more complicated with regard to the handover of individuals suspected of genocide and other crimes against humanity on a bilateral basis among national governments.

4. First of all, the country seeking extradition of an accused would have to submit a formal request to this effect to the country where the accused is residing (e.g. Zaire). A Zairean court must then issue an indictment indicating that there is "sufficient evidence" of the accused's culpability with regard to the crimes for which he is charged (which must, according to resolution 978, be within the ITR's jurisdiction.). The standard of proof would be determined by the legal system of Zaire (not the country seeking extradition, such as Rwanda). Furthermore, even if an indictment is issued by a Zairean court, extradition of the accused would not be possible in the absence of an extradition treaty between the two countries. However, ad hoc arrangements between Rwanda and Zaire would still be possible subject to the agreement of both Governments.

5. Since the Security Council did not adopt resolution 978 under its Chapter VII powers, it only "urges" States to comply with the provisions of this resolution, but they are under no obligation to do so.

Ladan Rafii
Political/Legal Officer
15 September 1995

6. I recognize that 955 under Ch VII obliges countries to take action and 978 only urges under Ch VI. However I am concerned with political and moral pressure under Ch VI related to 978

p.t.o

Tribunal.

FACSIMILE

45311

IN 4010 001 010

TO: KHAN UNAMIR, KIGALI	FROM: ANNAN, UNATIONS, NEW YORK
DATE: 26 October 1994	Fax No. (212) 963-9222
SUBJECT: Draft resolution on the Int. Tribunal for Rwanda	
TOTAL NUMBER OF TRANSMITTED PAGES INCLUDING THIS PAGE: 16	

Please find attached, for your information, copy of the revised version of the draft resolution on the International Tribunal for Rwanda which was circulated, but not discussed, during informal consultations of the Security Council held yesterday. The draft statute of the Tribunal is also attached. Will keep you informed. Regards.

1 Copy fr me
1 Copy fr LA (Mr Ramcharan).

See

S.

SRSG C/DIR

Mr. Anwabi

UNITED NATIONS

S

Security Council

PROVISIONAL

S/1994/1168
25 October 1994

ORIGINAL: ENGLISH

New Zealand, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda,

Having considered the reports of the Secretary-General pursuant to paragraph 3 of resolution 935 (1994) of 1 July 1994 (S/1994/879 and S/1994/906), and having taken note of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II),

Expressing appreciation for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of International Humanitarian Law in Rwanda transmitted by the Secretary-General's letter of 1 October 1994 (S/1994/1125),

Expressing once again its grave concern at the reports indicating that systematic, widespread and flagrant violations of international humanitarian law, including acts of genocide, have been committed in Rwanda,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal for the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Stressing also the desirability of international cooperation to strengthen the courts and judicial system of Rwanda,

Considering that the Commission of Experts established pursuant to resolution 935 (1994) should continue on an urgent basis the collection of information relating to evidence of grave violations of international humanitarian law committed in the territory of Rwanda and should submit its final report to the Secretary-General by 30 November 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States between 1 January 1994 and a date to be determined by the Security Council, which shall determine the date within three months after the adoption of this resolution and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

2. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

3. Considers that the Government of Rwanda should be notified prior to decisions under articles 26 and 27 of the Statute;

4. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

5. Requests the Secretary-General to implement this resolution urgently and in particular to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the International Tribunal at the earliest time and to report periodically to the Council;

6. Decides that the seat of the International Tribunal shall be determined by the Council having regard to considerations of justice and fairness as well as administrative efficiency including access to witnesses, and economy, and subject to the conclusion of appropriate arrangements between the United Nations and the State of the seat, acceptable to the Council, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions, and the desirability of the establishment of an office and the conduct of proceedings, where feasible and appropriate, in Rwanda;

7. Decides to remain actively seized of the matter.

Annex

Statute of the International Tribunal for Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994 in accordance with the provisions of the present Statute.

Article 2

Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

Article 3

Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation;

(e) Imprisonment;

(f) Torture;

(g) Rape;

(h) Persecutions on political, racial and religious grounds;

(i) Other inhumane acts.

Article 4

Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Pillage;

(g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

(h) Threats to commit any of the foregoing acts.

Article 5

Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace and to the Territory of neighbouring States in respect of serious violations of international humanitarian law by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of Member States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9

Non-bis-in-idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

(a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(b) The Prosecutor; and

(c) A Registry.

Article 11

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

Article 14

Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20

Rights of the accused

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21

Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

(a) An error on a question of law invalidating the decision; or

(b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. The President of the International Tribunal for Rwanda, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law.

Article 28

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited

(a) The identification and location of persons;

(b) The taking of testimony and the production of evidence;

(c) The service of documents;

(d) The arrest or detention of persons;

(e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

The status, privileges and immunities of the International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30

Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

Article 31

Working languages

The working languages of the International Tribunal shall be English and French.

Article 32

Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.

CODE CROIX

CNR 607 02 OSRSG/LA/006

SECURITY COUNCIL INFORMAL CONSULTATIONS

13 October 1994

The SECCO held informal consultations on Rwanda to discuss the Draft Resolution and the Statute setting up an international tribunal on Rwanda. Members also agreed on a Presidential Statement on Rwanda to be issued tomorrow, 15 October.

The Draft Resolution (attached)

The United States, Rwanda, New Zealand, Spain, China, Brazil, Pakistan, the United Kingdom spoke on this item. Rwanda reiterated its position that the International Tribunal should sit in Rwanda. It also expressed the view that it would want dates to be set as to the period the crimes to be brought before the International Tribunal were committed. It proposed the dates of January 1994 to the date the war ended. Brazil supported the proposal of defining the period during which the crimes were committed. Most Members were of the view that it was important that justice be seen to be done and that the Tribunal was seen to be fair. The Tribunal was also to be a tool for national reconciliation. Therefore, it was too early to determine the closing date for the commission of the crimes. New Zealand said in any case the dates could not be those mentioned by Rwanda.

The Statute (annex to the Draft Resolution)

The Statute was discussed in four parts: Jurisdiction of the Tribunal, Articles 1-9, the structure of the Tribunal, Articles 10-16 and other matters - Articles 17-32. Rwanda, Spain, the United States, New Zealand, the United Kingdom, China, Brazil, Pakistan made statements.

On Jurisdiction, Rwanda suggested the dropping of Article 2 from the Statute stating that crimes other than those against humanity should be brought before domestic courts. Most Member States objected to this suggestion. The United States and the President said that possibly another formulation could be found.

Rwanda also expressed concern with Article 8 which gave the International Tribunal primacy over national courts. New Zealand, the President, the United States and Spain, emphasized that the Tribunal had to have primacy over national courts otherwise the whole exercise would be useless. New Zealand emphasized that the International Tribunal should be given powers to take over cases that were before domestic courts if it felt that justice was not being done. The United Kingdom reminded Rwanda that it was its Government which had requested for the Tribunal and therefore could not deny it to be given the powers to do its work. Spain suggested that the text could be refashioned while maintaining the concept of primacy of the Tribunal.

In discussing the structure of the Tribunal, Spain stated that it would have wanted a complete separation of the Yugoslavia Tribunal from the Rwanda one. However, it was prepared to accept that they could use some common elements.

On other matters, Rwanda referred to the sentencing mentioned in Article 26 and to the granting of the pardon mentioned in Article 27 and emphasized that it was only the Rwandese who could pardon those who had committed crimes. The United States and New Zealand pointed out that it should be assumed that some prisoners would serve their sentences in Rwanda while others would do so in third countries. Therefore, the laws of the third countries would have to be observed.

The question of financing the Tribunal was raised. It was agreed that the issue fell within the competence of the General Assembly. Most Members were satisfied with the phrasing of Article 30.

At the end of the discussion on this item, Brazil made a statement reiterating its position that the Security Council had no competence in matters of setting international tribunals. It said that such tribunals should be set up by conventions of the international community.

The President requested the United States and New Zealand as the original drafters of the Statute to immediately undertake consultation on issues raised.

Presidential Statement (attached)

The United States, New Zealand and Spain made brief statements reiterating the major points in the statement such as the importance of separating the militia from refugees, the creation of conditions of security, normalizing the situation in Rwanda and the region, speedy deployment of human rights monitors, the importance of a radio station and working for national reconciliation and reconstruction. They reiterated their desire for an urgent report from the Secretary-General on his recommendations of enhancing security in the camps.

Rwanda stated that it would be able to report tomorrow on the status of the operation of UNAMIR radio station.

Leonard T. Kapungu
13 October 1994

12 October 1994
1:00 p.m

Draft Presidential Statement on Rwanda

The Security Council has considered the Secretary-General's progress report on the United Nations Assistance Mission for Rwanda (UNAMIR) (S/1994/1133). **The Council stresses the importance it attaches to the role of UNAMIR, whose neutral and independent presence is crucial to creating conditions of security.** It welcomes the Secretary-General's revised deployment schedule for UNAMIR which is intended to promote security in all sectors of the country and create conditions conducive to the return of refugees. It also welcomes the assistance being provided by UNAMIR to the Government of Rwanda's efforts to establish a new integrated police force. **It encourages UNAMIR to** continue that assistance **and asks the Secretary-General to provide it with detailed information on this programme.**

The Security Council remains extremely concerned at the plight of the millions of refugees and displaced persons in Rwanda and the countries of the region. It reiterates its view that their return to their homes is essential for the normalisation of the situation in Rwanda **and for the stabilisation of the region.** It deplores the continuing acts of intimidation and violence within the refugee camps which are designed to prevent the refugee population there from returning home. It welcomes the commitment of the Governments of Zaire, Tanzania **and Burundi** to help resolve the problems facing the refugees, and calls upon them to do all in their power to ensure the safety both of the refugees and of the international personnel providing humanitarian assistance to the **refugees.**

The Security Council notes the view expressed in the report that the most effective way of ensuring the safety of the refugees and their freedom to return to Rwanda would be the separation of political leaders, former RGF soldiers and militias from the rest of the refugee population, and looks forward to receiving a further report from the Secretary-General on this issue, as soon as possible, based inter alia on the findings of the United Nations team participating in Joint Zairian/United Nations working group. It stresses once again the responsibilities which fall upon the neighbouring countries including **that of** ensuring that their territories are not used to **destabilise** the situation.

The return of refugees is also crucially dependent upon the situation within Rwanda itself, including the existence of a climate of confidence and the establishment of a more secure environment. The Security Council notes the important role human rights monitors **and their speedy deployment** will have in this context **and notes also the importance of** cooperation between them

and UNAMIR. **The Security Council stresses the importance it attaches to UNAMIR having an effective broadcasting service to provide objective information. It hopes that the Government of Rwanda will assist in enabling the proposed UN radio station to come into operation as soon as possible.**

The Security Council welcomes the efforts being made by the Rwandan Government to facilitate the return of refugees and to begin the difficult process of national reconciliation and reconstruction in the country. **It notes with concern reports that some reprisals may have occurred and affirms** the importance it attaches to the avoidance of reprisals against returnees and to the safeguarding of their property rights. It welcomes the speed with which the United Nations and the Government of Rwanda responded to allegations that **some RPA** soldiers might have been responsible for systematic killings. **It** underlines the importance it attaches to the thorough **and expeditious** investigation of these allegations.

The Security Council welcomes the assurance given to Council members by President Bizimungu of his Government's commitment to achieving national reconciliation and promoting respect for the fundamental rights of individuals. The Security Council stresses the importance it attaches to the Government of Rwanda implementing this commitment. In this context it endorses the Secretary-General's call to the Government of Rwanda to maintain an open dialogue with all political interest groups in Rwanda in an effort to achieve genuine reconciliation between all elements of Rwandan society, **within the frame of reference of the** Arusha Peace Agreement. In particular, the Security Council encourages the Rwandan Government to continue its efforts to invite members of the MRND **who were not involved in the massacres** to participate in the Government and to absorb members of the former RGF into the new army.

The Security Council reaffirms its view that those responsible for serious breaches of international humanitarian law and acts of genocide must be brought to justice. **It stresses that persons involved in such acts cannot achieve immunity from prosecution by fleeing the country and notes that the provisions of the Convention relating to the status of refugees do not apply to such persons.** ~~**In this context,** the Council is currently considering the recommendations of the Commission of Experts in respect of the establishment of an international tribunal and will act expeditiously in the matter.~~ **In this context the Council is acting separately to establish an international tribunal.**

The Security Council commends the assistance given by the international community, the UN agencies and non-governmental organisations in response to the crisis in Rwanda. It calls on them to maintain their support during the difficult transition

CNR 607 21/21

from relief to rehabilitation and reconstruction. It endorses the Secretary-General's views as to the importance of immediate and co-ordinated assistance in particular to the restoration of civil administration and the reconstruction of the social and economic infrastructure of the country.

The Security Council agrees with the Secretary-General that developments in Rwanda strengthen the case for a broader approach to the question of national reconciliation and other key aspects of the crisis. It encourages him to continue his consultations on how the United Nations can assist in the preparation and convening of an international conference to look into the problems of the sub-region.

The Security Council will remain seized of the matter.

Note to Mr. Khan

Comments on the draft exchange of letters between the United Nations and the Government of Rwanda concerning the status of the International Tribunal Prosecutor's office

1. In general terms, the modifications proposed by the Government[1] to the initial UN proposal are in line with the modifications the Government wants to introduce in the SOMA for UNAMIR.

2. The most troublesome modifications that the Government attempts to impose regarding the operations of the Prosecutor's Office relate to restrictions to freedom of movement. The Legal Counsel is not prepared to accept that freedom of movement of the Prosecutor's office staff within Rwanda be subject to any regulations governing the residence of aliens in certain parts of Rwanda. (In the case of the new SOMA for UNAMIR, the Government wans to grant freedom of movement to UNAMIR and its members throughout the territory, but only "in exercise of its mandate"). Regarding access of the Prosecutor's Office staff to prisons, detention centers and interrogation sites, whereas the United Nations wanted it to be "without prior notification", the Government proposed that it be previously authorized (on a case-by-case basis) by the Rwandese judiciary. The compromise the Legal Counsel is offering is to have the exercise of such right of access "coordinated with the Government". Although this may be inevitable, the "coordination" could easily be transformed into an "authorization", and thus seriously hamper the Prosecutor's efforts to gain access to many of the witnesses held under detention.

3. Although it is obvious that the exchange of letters cannot, by its nature, be as detailed as a full-fledged agreement (such as the one established for the site of the Tribunal between Tanzania and the United Nations), I believe that the lack of detail on certain points could be a source of problems in the future. This is particularly true with respect to the following issues:

a) Privileges and immunities (P&I) of locally-recruited staff. Both the UNAMIR SOMA and the Agreement between the UN and Tanzania distinguish between the P&I of locally-recruited staff and "international" staff. In the proposed draft exchange of letters, the P&I of articles V and VII of the Convention on the P&I of the United Nations are granted to "the United Nations Secretariat staff assigned to the Office (of the Prosecutor) which names will be communicated to the Government to this effect". Although it is true that locally-recruited staff (except those assigned to hourly rates, e.g., those under SSA) are "United Nations Secretariat staff assigned to the Office (of the Prosecutor)", I believe that the fact of not referring to them specifically might create some confusion, considering that in past agreements this category of staff was singled out. This could become an important issue in the light of the pressures that locally-recruited staff could be subject to if their P&I are not clearly defined and uphold.

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[1] I do not have the text of the original draft exchange of letters nor the text of the Government's reaction to it; these comments are provided on the basis of the Legal Counsel's reaction to the Government's proposed amendments.

b) Protection of the premises of the Prosecutor's office and its staff in and outside Kigali. The proposed exchange of letters states that, in accordance with its mandate, UNAMIR will ensure such protection. It might have been wise to leave a door open for future protection arrangements, not refering to UNAMIR but rather to "the UN or any of its subsidiary bodies" (or any other formula of the like), considering the possible withdrawal of UNAMIR at a time when the Prosecutor's office will still be in existence. As this issue affects directly the exercise of Rwanda's sovereign powers over its territory, it is foreseable that difficulties might occur in this respect.

4. Thank you.

Diego Zorrilla
20 October 1995

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE:

Le 4 octobre, 1995

Monsieur l'Ambassadeur,

Je vous serais reconnaissant de bien vouloir transmettre la lettre ci-jointe en date du 4 octobre 1995 que j'addresse à son Excellence, Monsieur le Ministre des Affaires Etrangères et de la Coopération du Rwanda et à laquelle est annexée une version revisée du projet d'accord sous forme d'échange de lettres visant à régir le statut du Bureau chargé de l'instruction et des poursuites mis en place à Kigali. Une copie de la lettre et de son annexe sont ci-jointes pour votre information.

Veuillez agréer, Monsieur l'Ambassadeur, les assurances de ma trés haute consideration.

Le Secrétaire général adjoint
aux affaires juridiques
Conseiller juridique

Hans Corell

Plus the revised version to be sent with the Registrar's letter to the LA 19.10 gee

Son Excellence
Monsieur Manzi Bakuramutsa
Ambassadeur extraordinaire et plénipotentiaire
Représentant permanent de la République Rwandaise
New York, N.Y.

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE

4 octobre 1995

Monsieur le Ministre,

J'ai l'honneur, au nom du Secrétaire général, de me référer à votre lettre en date du 27 septembre 1995 en réponse au ~~projet d'accord~~ entre l'Organisation des Nations Unies et le Gouvernement du Rwanda concernant la mise en place d'un Bureau chargé de l'instruction et des poursuites à Kigali, tel que proposé par le Secrétaire général.

Bonne note a été prise de l'acceptation par le Gouvernement des privilèges et immunités énoncés dans le projet d'accord en question ainsi que des propositions faites par le Gouvernement à certaines dispositions dudit projet. Ces propositions ont été examinées et appellent les commentaires suivants:

- La proposition relative à l'accès au territoire Rwandais par le personnel du Bureau est acceptable. Ainsi, une liste du personnel du Bureau arrivant au Rwanda sera communiquée au Gouvernement et le personnel de ce Bureau sera muni des documents de voyage nécessaires conformément aux dispositions pertinentes de la Convention sur les privilèges et immunités des Nations Unies (la Convention), soit le laissez-passer des Nations Unies, soit le certificat de voyage.

Son Excellence
Monsieur Gasana Anastase
Ministre des Affaires Etrangères et de la Coopération
de la République Rwandaise

- S'agissant des propositions concernant la liberte de circulation dans le territoire du Rwanda, il convient de souligner que, comme proposé par le Gouvernement, le Bureau et son personnel sont tenus d'observer les règlements relatifs à la circulation. Cette obligation dérive des dispositions de la Convention qui est applicable dans le cadre du projet d'accord et plus précisément aux dispositions de la Section 21 qui stipulent:

> "L'Organisation des Nations Unies collaborera, en tout temps, avec les autorités compétentes des Etats Membres en vue de faciliter la bonne administration de la justice, d'assurer l'observation des réglements de police et d'éviter tout abus auquel pourraient donner lieu les privilèges, immunités et facilités énumérés dans le présent article."

En revanche, assujettir la liberté de circulation du Bureau et son personnel dans le territoire du Rwanda aux lois et règlements relatifs au séjour dans certaines zones entraverait inévitablement l'accomplissement des tâches du Bureau et son personnel. Aussi, cette proposition qui restreint la liberté de circulation ne peut être retenue.

- La proposition d'assujettir le droit d'accès aux établissements pénitentiaires, centres de détention et lieux d'interrogatoire, à l'autorisation préalable de l'organe judiciaire rwandais pourrait également avoir des effets restrictifs sur des tâches essentielles du Bureau et son personnel. Une alternative qui tiendrait compte de cette proposition sans porter atteinte au droit dont il s'agit, serait de coordonner l'accès aux lieux en question avec le Gouvernement. Si cette alternative rencontre l'agrément du Gouvernement, l'expression "sans notification préalable" serait remplacée par "en coordination avec le Gouvernement".

- La proposition touchant aux télécommunications sera prise en considération dans les dispositions concernees. Aussi, le texte suivant sera ajouté à la fin du point xi) du projet d'accord: "Les services de télécommunications seront exploités conformément à la Convention internationale des télécommunications et du Réglement des radiocommunications, et les fréquences utilisées pour l'exploitation des stations seront fixées en coopération avec le Gouvernement et portées à la

connaissance du Comité international d'enregistrement des fréquences par l'Organisation des Nations Unies".

- La proposition concernant la rémunération des services d'utilité publique est acceptable et sera dûment inserée dans les dispositions concernées.

Je voudrais saisir cette occasion pour introduire une modification qui concerne la référence dans le texte du projet d'accord à la résolution 965 (1994) du Conseil de sécurité en date du 30 novembre. Celle-ci doit être remplacée par la référence à la **résolution 997 (1995)** adoptée par le Conseil de sécurité **le 9 juin**, postérieurement à la date à laquelle le projet d'accord vous avait été communiqué.

Je vous prie de bien vouloir trouver ci-joint le projet d'accord revisé qui tient compte des propositions du Gouvernement du Rwanda. Afin de faciliter la lecture de ce texte, les révisions qui y ont été apportées sont soulignées. **J'espère que ~~ce projet d'accord rencontrera l'agrément du Gouvernement~~ et que le texte final des lettres sera échangé incessamment.**

Veuillez agréer, Monsieur le Ministre, l'assurance de ma très haute considération.

Hans Corell

Secrétaire général adjoint
aux affaires juridiques
Conseiller juridique

PROJET D'ÉCHANGE DE LETTRES ENTRE L'ORGANISATION DES NATIONS UNIES ET LE RWANDA CONCERNANT LA MISE EN PLACE D'UN BUREAU CHARGÉ DE L'INSTRUCTION ET DES POURSUITES À KIGALI

Monsieur,

J'ai l'honneur d'appeler votre attention sur la résolution 955 (1994) du 8 novembre 1994 par laquelle le Conseil de sécurité, agissant en vertu du Chapitre VII de la Charte, a décidé de créer un tribunal international (ci-après dénommé "Tribunal international pour le Rwanda") chargé uniquement de juger les personnes présumées responsables d'actes de génocide ou d'autres violations graves du droit international humanitaire commis sur le territoire du Rwanda et les citoyens rwandais présumés responsables de tels actes ou violations commis sur le territoire d'États voisins, entre le 1er janvier et le 31 décembre 1994.

Conformément au paragraphe 6 de ladite résolution aux termes duquel le Conseil de sécurité a décidé, entre autres choses, d'établir au Rwanda un bureau chargé de l'instruction et des poursuites, ledit bureau (ci-après dénommé "le Bureau") a donc été mis en place à Kigali.

En conséquence, afin que le Bureau puisse remplir facilement sa mission, je propose que votre gouvernement, s'acquittant ce faisant de ses obligations au regard de l'Article 105 de la Charte des Nations Unies, étende en sa faveur, en tant qu'organe des Nations Unies, à ses biens, fonds, avoirs et à son personnel, les privilèges et immunités prévus dans la Convention sur les privilèges et immunités des Nations Unies (la Convention) à laquelle le Rwanda est partie.

Compte tenu de l'importance spéciale des fonctions dont le Bureau s'acquittera au Rwanda, je propose que votre gouvernement étende :

- Au Procureur du Tribunal international pour le Rwanda, à son assesseur, au magistrat chargé de l'instruction et aux

autres principaux membres du Bureau dont les noms lui seront communiqués à cet effet, les privilèges et immunités, exemptions et facilités dont jouissent les agents diplomatiques conformément au droit international;

- Aux fonctionnaires du Secrétariat de l'Organisation des Nations Unies affectés au Bureau, dont les noms seront communiqués au Gouvernement à cet effet, les privilèges et immunités auxquels ils ont droit en vertu des Articles V et VII de la Convention;

- Aux autres personnes affectées au Bureau, dont les noms seront communiqués au Gouvernement à cet effet, les privilèges et immunités accordés aux experts en mission pour le compte des Nations Unies, en vertu de l'article VI de la Convention.

Les privilèges et immunités nécessaires au bon fonctionnement du Bureau couvrent également les droits et facilités suivants :

i) Liberté totale d'accès au territoire et de sortie du territoire du Rwanda, sans délai ni entrave, pour son personnel et en ce qui concerne ses biens, fournitures, équipement et moyens de transport;

ii) Liberté totale de circulation dans tout le territoire du Rwanda pour son personnel et en ce qui concerne ses biens, équipement et moyens de transport;

iii) Droit d'accès à tous les établissements pénitentiaires, centres de détention et lieux d'interrogatoire, en coordination avec le Gouvernement. Les membres du Bureau auront la possibilité de s'entretenir en privé avec toute personne detenue ou se trouvant en tels lieux;

iv) Accès à tous les documents dont la consultation peut être nécessaire pour le bon fonctionnement du Bureau;

v) Droit d'entrer directement en contact avec les autorités centrales et locales dans les diverses branches de l'appareil de l'État, y compris les forces armées;

vi) Droit d'interroger les victimes et les témoins, de rassembler des preuves et tous renseignements utiles et de mener des enquêtes sur le terrain;

vii) Droit d'entrer directement en contact avec des particuliers, des organisations intergouvernementales et non gouvernementales, des institutions privées et avec les médias;

viii) Droit de prendre toutes dispositions, en usant de ses propres moyens, pour faire transférer toutes les bases de données et toute l'information rassemblée;

ix) Exemption de tous impôts directs, taxes à l'importation et à l'exportation, droits d'enregistrement et autres redevances. Toutefois, l'exemption des droits qui correspondent en fait à la rémunération de services rendus ne sera pas réclamée;

x) Droit d'arborer le drapeau des Nations Unies dans ses locaux et sur ses véhicules;

xi) Droit illimité de communiquer par radio, satellite ou autres moyens de communication avec le Siège des Nations Unies et entre les différents bureaux y compris en usant du réseau de télécommunications (radio et satellite) des Nations Unies, et de tous autres moyens, téléphone, télégraphe, etc. Les services de télécommunications seront exploités conformément à la Convention internationale des télécommunications et du Réglement des radiocommunications, et les fréquences utilisées pour l'exploitation des stations seront fixées en coopération avec le Gouvrnement et portées à la connaissance du Comité d'enregistrement des fréquences par l'Organisation des Nations Unies.

xii) Droit de prendre toutes dispositions, en usant de ses propres moyens, pour le tri et le transport du courrier privé adressé aux membres du Bureau ou envoyé par eux. Le Gouvernement rwandais sera informé de la nature de ces dispositions et n'interférera pas avec elles ni ne censurera en aucune manière le courrier du Bureau et de ses membres.

Il est entendu que le Gouvernement rwandais mettra, dans toute la mesure du possible, à la disposition du Bureau, les locaux nécessaires pour la conduite de ses activités officielles et administratives dans tout le territoire du Rwanda. Les locaux utilisés par le Bureau et ses membres seront inviolables, placés sur le seul contrôle du Procureur et relèveront exclusivement de l'autorité de celui-ci.

Conformément à la résolution 997 (1995) du Conseil de sécurité, en date du 9 juin 1995, la Mission des Nations Unies pour l'assistance au Rwanda (MINUAR) assurera la sécurité du Bureau, de ses locaux et des enquêteurs en mission à Kigali et en dehors de Kigali.

Si les dispositions ci-dessus rencontrent votre agrément, je propose que cette lettre et la réponse que vous y donnerez constituent un accord entre l'Organisation des Nations Unies et le Rwanda sur le statut du Bureau et de son personnel, avec effet immédiat.

Veuillez agréer, Monsieur, les assurances de ma très haute considération.

Boutros Boutros-Ghali

V. INTERNATIONAL TRIBUNAL FOR RWANDA

In my report to the Security Council of 25 August 1995 (S/1995/741), I informed the Council of progress made regarding the practical and legal arrangements for the seat of the Tribunal, its financing, the status of contributions in funds and personnel and the activities of its various organs. Since that date, further significant developments have occurred with regard to the Tribunal's operations.

On 30 August, the Prosecutor for the Tribunal, Judge Richard Goldstone, and its President, Judge Laïty Kama, visited Kigali accompanied by Mr. Andronico Adede from the Office of Legal Affairs in New York who has since been appointed as the Registrar of the Tribunal. During the course of their three-day visit, they met with senior Rwandese Government officials and my Special Representative to discuss the Tribunal's operations in Rwanda. On 1 September, they visited the seat of the Tribunal in Arusha, Tanzania, to inspect the premises designated for the Tribunal, a proposed prison site, as well as accomodation arrangements for the Tribunal's staff.

A Headquarters Agreement between the United Nations and the United Republic of Tanzania was signed on 31 August 1995 and a Memorandum of Understanding with the Government of Rwanda is currently being negotiated, as is a lease agreement for the Tribunal's premises in Arusha. Despite continued administrative and logistical difficulties, it is still envisaged that the Tribunal's first indictments will be ready before the end of the year. Renovations to the Arusha International Conference Centre, where trials will be held, are expected to commence soon, and a separate wing to the detention facilities at Arusha prison is under construction. Progress continues to be made in the recruitment of staff for the Office of the Prosecutor. I would like to express my gratitude to those Governments which have contributed personnel and resources to the Tribunal, and hope that such support will continue in order to expedite the commencement of trial proceedings.

UNITED NATIONS NATIONS UNIES

INTERNATIONAL TRIBUNAL FOR RWANDA TRIBUNAL INTERNATIONAL POUR LE RWANDA

UNICEF Building, P.O. Box 749, Kigali, Rwanda. Tel.: +(255) 84266 extn 11013/17 Tel.: +(1-212) 963 9906 Fax: +(1-212) 963-4001
Aegon Building, Churchillplein 1, 2517 JW The Hague, The Netherlands. Telephone: +(31-70) 416-5347 Fax: +(31-70) 416-5358

Office of the Prosecutor
Bureau du Procureur

The Deputy Prosecutor **Le Procureur Adjoint**

Progress Report
8 August-8 October 1995

On August 30, 31 and September 1, President Laity Kama together with Justice Goldstone and Mr. Adede from the Office of Legal Affairs, New York, spent three days in Kigali and Arusha. The purpose of this visit was to introduce the President of the International Tribunal to government officials in Rwanda and Tanzania.

An Agreement between the United Nations and the United Republic of Tanzania concerning the headquarters of the International Tribunal for Rwanda has been signed in New York on 31 August 1995 by the Permanent Representative of the Republic of Tanzania to the United Nations and the Under-Secretary-General for Legal Affairs.

The Memorandum of Understanding with the Government of Rwanda is yet to be signed.

It is hoped that renovations to the Arusha Conference Centre, where trials will be held, will commence before the end of the year. Detention facilities in Arusha Prison are improving: a separate wing is presently being built.

By the end of September, the Office of the Prosecutor will be staffed by more than 30 investigators, and progress continues on the recruitment of further staff both seconded and direct hire. The Tribunal wishes to thank those governments who have already seconded investigators to the ITR and hopes that UN direct hire staff will arrive in Kigali as quickly as possible.

Administration and logistic support for the Office of the Prosecutor remains weak but with the appointment of a Procurement Officer and Logistics Officer it is hoped that collaboration with UNAMIR will bring impetus to the acquisition of office equipment such as chairs, desks and telephone lines. Most of all, with the imminent appointment of the Registrar, progress on a range of administrative and recruitment issues will be achieved.

Despite all the initial difficulties the Tribunal has had to face, particularly in the area of administrative support, it is likely that the first indictments will be ready before the end of the year.

15 September 1995

UNITED NATIONS NATIONS UNIES
ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR - MINUAR

NOTE TO SRSG

As you requested, I am writing to inform you of the legal implications of resolution 978 which, inter alia:

> Urges States to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda.

In resolution 955, the Security Council acted under Chapter VII powers in establishing the International Tribunal for Rwanda (ITR). As such, all States are required to cooperate fully with the ITR, including the obligation to comply with requests for assistance or orders issued by the Trial Chamber under Article 28 of the Statute. This includes, but is not limited to, the identification and location of persons; the taking of testimony and the production of evidence; the service of documents; the arrest or detention of persons; and the surrender or transfer of the accused to the ITR.

Although the obligation of States vis à vis the ITR is clearly delineated in the Security Council resolutions, the matter is somewhat more complicated with regard to the handover of individuals suspected of genocide and other crimes against humanity on a bilateral basis among national governments.

First of all, the country seeking extradition of an accused would have to submit a formal request to this effect to the country where the accused is residing (e.g. Zaire). A Zairean court must then issue an indictment indicating that there is "sufficient evidence" of the accused's culpability with regard to the crimes for which he is charged (which must, according to resolution 978, be within the ITR's jurisdiction.). The standard of proof would be determined by the legal system of Zaire (not the country seeking extradition, such as Rwanda). Furthermore, even if an indictment is issued by a Zairean court, extradition of the accused would not be possible in the absence of an extradition treaty between the two countries. However, ad hoc arrangements between Rwanda and Zaire would still be possible subject to the agreement of both Governments.

Since the Security Council did not adopt resolution 978 under its Chapter VII powers, it only "urges" States to comply with the provisions of this resolution, but they are under no obligation to do so.

Ladan M. Rafii
Political/Legal Officer
15 September 1995

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Fax No. 963-3090

RECEIVED
12 SEP 1995
OFFICE OF THE SRSG
UNAMIR

To: Mr. Shaharyar M. Khan
Special Representative
of the Secretary-General for Rwanda
Kigali

From: Ralph Zacklin, Director and Deputy
to the Under-Secretary-General
Office of Legal Affairs

Please refer to the attached.

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AUTHORIZED BY / AUTORISE PAR

SIGNATURE: Ralph Zacklin DATE: 11 September 1995
Director and Deputy to the Under-Secretary-General, OLA

NAME AND TITLE (PLEASE TYPE) / NOM ET QUALITE (A DACTYLOGRAPHIER)

COM.7 (1-87)

UNITED NATIONS
ASSISTANCE MISSION TO RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

INTER-OFFICE MEMORANDUM

DATE: September 7, 1995

TO: S. Khan
SRSG

FROM: W. Clive
OIC Administration ai

SUBJECT: SITE RECONNAISSANCE AND DISCUSSIONS WITH THE MINISTRY OF COMMUNICATIONS OF THE GOVT OF TANZANIA

In consultation with Judge Goldstone and Mr. Adede, UNAMIR had initiated a follow-up site reconnaissance of the Arusha International Conference Center (AICC) and a meeting with officials of the Ministry of Communications of the Government of Tanzania.

The team was to look into issues such as the installation of a satellite communications network, existing telephone facilities and VHF radio requirements. The team had secured a meeting at 1430 on Friday, August 8 1995 with the Minister of Communications in Dar-Es-Salaam to initiate the licensing procedure for the Tribunal's Tanzanian communications needs.

In addition Mr. Joseph Lombardo, the administrative and logistic liaison officer for the Tribunal was to accompany the team and would have evaluated the conference facilities as well as any support services that are available in the city. Mr. Michael Booth, UNAMIR Security Officer would have accompanied the team to undertake a preliminary security survey of the AICC and his findings were to be forwarded to UNSECOORD and the Registrar of the Tribunal. The team was to be lead by Mr. William Clive, OIC Administration, ai.

However, we were requested by Mr. Gili to cancel the trip after briefing him by telephone yesterday. Mr. Gili informed us that Mr. Duncan Robinson had already written a technical report, had met with the Minister of Communications and had secured all the proper authorization from the government. Further, Mr. Gili informed us that it would be highly impractical for a team to visit the site in Arusha as negotiations have not been completed for the AICC. Based on Mr. Gili's request, UNAMIR has cancelled its mission to Arusha.

Ambassador, as you know, UNAMIR will most probably be tasked with the implementation of any plan to get the Tribunal operational in Tanzania. I feel that this cancellation will hinder our eventual efforts to effectively assist the Tribunal to establish itself in Tanzania.

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Fax No. 3090

RECEIVED
06 SEP 1995
OFFICE OF THE SRSG
UNAMIR

To: Ms. Ladan Rafii
Political Officer
UNAMIR, Kigali

From: Daphna Shraga, Legal Officer
Office of the Legal Counsel, OLA

As requested, please find enclosed the Agreement between the United Nations and Tanzania concerning the Headquarters of the International Tribunal for Rwanda.

Regards.

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	SIGNATURE: Daphna Shraga DATE: 5 September 1995 Legal Officer, Office of the Legal Counsel, OLA NAME AND TITLE (PLEASE TYPE) / NOM ET QUALITE (A DACTYLOGRAPHIER)

AGREEMENT BETWEEN THE UNITED NATIONS AND THE UNITED REPUBLIC OF TANZANIA CONCERNING THE HEADQUARTERS OF THE INTERNATIONAL TRIBUNAL FOR RWANDA

Whereas the Security Council of the United Nations acting under Chapter VII of the Charter of the United Nations inter alia decided, by its resolution 955 (1994) of 8 November 1994, "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994";

Whereas the International Tribunal for Rwanda is established as a subsidiary organ within the terms of Article 29 of the Charter of the United Nations;

Whereas the Security Council, by its resolution 977 (1995) of 22 February 1995 decided that "subject to the conclusion of appropriate arrangements between the United Nations and the Government of the United Republic of Tanzania, the International Tribunal for Rwanda shall have its seat at Arusha";

Whereas the United Nations and the United Republic of Tanzania wish to conclude an Agreement regulating matters arising from the establishment and necessary for the proper functioning of the International Tribunal for Rwanda in the United Republic of Tanzania;

The United Nations and the United Republic of Tanzania have agreed as follows:

ARTICLE I
DEFINITIONS

For the purpose of the present Agreement, the following definitions shall apply:

(a) "the Tribunal" means the International Tribunal for Rwanda established by the Security Council pursuant to its resolution 955 (1994);

(b) "the premises of the Tribunal" means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the Tribunal in the host country in connection with its functions and purposes;

(c) "the host country" means the United Republic of Tanzania;

(d) "the Government" means the Government of the United Republic of Tanzania;

(e) "the United Nations" means the United Nations, an international governmental organization established under the Charter of the United Nations;

(f) "the Security Council" means the Security Council of the United Nations;

(g) "the Secretary-General" means the Secretary-General of the United Nations;

(h) "the competent authorities" means national, regional, municipal and other competent authorities under the law of the host country;

(i) "the Statute" means the Statute of the Tribunal adopted by the Security Council by its resolution 955 (1994);

(j) "the Judges" means the Judges of the Tribunal as referred to in Article 12 of the Statute;

(k) "the President" means the President of the Tribunal as referred to in Article 13 of the Statute;

(l) "the Prosecutor" means the Prosecutor of the Tribunal as referred to in Article 15 of the Statute;

(m) "the Registrar" means the Registrar of the Tribunal as appointed by the Secretary-General pursuant to Article 16 of the Statute;

(n) "the staff of the Tribunal" means the staff of the Office of the Prosecutor as referred to in paragraph 3 of Article 15 of the Statute and the staff of the Registry as referred to in paragraph 4 of Article 16 of the Statute;

(o) "persons performing missions for the Tribunal" means persons performing certain missions for the Tribunal in the investigation or prosecution or in the judicial or appellate proceedings;

(p) "the witnesses" means persons referred to as such in the Statute;

(q) "experts" means persons called at the instance of the Tribunal, the Prosecutor, the suspect or the accused to present testimony based on special knowledge, skills, experience or training;

(r) "counsel" means a person referred to as such in the Statute;

(s) "the suspect" means a person referred to as such in the Statute;

(t) "the accused" means a person referred to as such in the Statute;

(u) "the General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the United Republic of Tanzania acceded on 29 October 1962;

(v) "the Vienna Convention" means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961, to which the United Republic of Tanzania acceded on 5 November 1962;

(w) "the regulations" means the regulations adopted by the Tribunal pursuant to this Agreement;

(x) "Rules of Procedure and Evidence" means the rules of procedure and evidence adopted by the judges in accordance with Article 14 of the Statute.

ARTICLE II
PURPOSE AND SCOPE OF THE AGREEMENT

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Tribunal in the United Republic of Tanzania.

ARTICLE III
JURIDICAL PERSONALITY OF THE TRIBUNAL

1. The Tribunal shall possess in the host country full juridical personality. This shall, in particular, include the capacity:

(a) to contract;

(b) to acquire and dispose of movable and immovable property;

(c) to institute legal proceedings.

2. For the purpose of this Article the Tribunal shall be represented by the Registrar.

ARTICLE IV
APPLICATION OF THE GENERAL AND VIENNA CONVENTIONS

The General Convention and the Vienna Convention shall be applicable mutatis mutandis to the Tribunal, its property, funds and assets, to the premises of the Tribunal, to the Judges, the Prosecutor and the Registrar, the staff of the Tribunal and persons performing missions for the Tribunal.

ARTICLE V
INVIOLABILITY OF THE PREMISES OF THE TRIBUNAL

1. The premises of the Tribunal shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the premises of the Tribunal without the express consent of the Tribunal. The property, funds and assets of the Tribunal, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

2. The competent authorities shall not enter the premises of the Tribunal to perform any official duty, except with the express consent, or at the request of, the Registrar or an official designated by him. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Tribunal except with the consent of and in accordance with conditions approved by the Registrar.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises of the Tribunal, the consent of the Registrar, or an official designated by him, to any necessary entry into the premises of the Tribunal shall be presumed if neither of them can be reached in time.

4. Subject to paragraphs 1, 2 and 3 above, the competent authorities shall take the necessary action to protect the premises of the Tribunal against fire or other emergency.

5. The Tribunal may expel or exclude persons from the premises of the Tribunal for violation of its regulations.

ARTICLE VI
LAW AND AUTHORITY ON THE PREMISES OF THE TRIBUNAL

1. The premises of the Tribunal shall be under the control and authority of the Tribunal, as provided in this Agreement.

2. Except as otherwise provided in this Agreement or in the General Convention, the laws and regulations of the host country shall apply within the premises of the Tribunal.

3. The Tribunal shall have the power to make regulations operative on the premises of the Tribunal for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Tribunal shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. No law or regulation of the host country which is inconsistent with a regulation of the Tribunal shall, to the extent of such inconsistency, be applicable within the premises of the Tribunal.

4. Any dispute between the Tribunal and the host country, as to whether a regulation of the Tribunal is authorized by this Article, or as to whether a law or regulation of the host country is inconsistent with any regulation of the Tribunal authorized by this Article, shall be promptly settled by the procedure set out in Article XXIX, paragraph 2 of this Agreement. Pending such settlement, the regulation of the Tribunal shall apply and the law or regulation of the host country shall be inapplicable within the premises of the Tribunal to the extent that the Tribunal claims it to be inconsistent with its regulation.

ARTICLE VII
PROTECTION OF THE PREMISES OF THE TRIBUNAL AND THEIR VICINITY

1. The competent authorities shall exercise due diligence to ensure the security and protection of the Tribunal and to ensure that the tranquility of the Tribunal is not disturbed by the intrusion of persons or groups of persons from outside the premises of the Tribunal or by disturbances in their immediate vicinity and shall provide to the premises of the Tribunal the appropriate protection as may be required.

2. If so requested by the President or the Registrar of the Tribunal, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Tribunal or in the immediate vicinity thereof, and for the removal of persons therefrom.

ARTICLE VIII
FUNDS, ASSETS AND OTHER PROPERTY

1. The Tribunal, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Tribunal has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. Without being restricted by financial controls, regulations or moratoria of any kind, the Tribunal:

(a) May hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

(b) shall be free to transfer its funds, gold or currency from one country to another, or within the host country, to the United Nations or any other agency.

ARTICLE IX
INVIOLABILITY OF ARCHIVES AND ALL DOCUMENTS OF THE TRIBUNAL

The archives of the Tribunal, and in general all documents and materials made available, belonging to or used by it, wherever located in the host country and by whomsoever held, shall be inviolable.

ARTICLE X
EXEMPTION FROM TAXES AND DUTIES

1. The Tribunal, its assets, income and other property shall be exempt from all direct taxes levied by state and other regional or local authorities or otherwise. It is understood, however, that the Tribunal shall not claim exemption from taxes and duties which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

2. While the Tribunal will not generally claim exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to the Tribunal, including rentals, nevertheless when the Tribunal is making important purchases for official use on which such taxes or duties have been charged or are chargeable, the Government shall make appropriate administrative arrangements for the remission or refund of such taxes or duties.

3. The Tribunal, its funds, assets and other property shall be exempt from all customs duties in respect of articles imported or exported by the Tribunal for its official use, including motor vehicles. The Tribunal shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications. Assets and other property for which an exemption from customs duties has been obtained shall not be sold within the United Republic of Tanzania except in accordance with conditions agreed to with the Government.

ARTICLE XI
COMMUNICATIONS FACILITIES

1. The Tribunal shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of the Tribunal shall be subject to censorship by the Government. Such immunity from censorship shall extend to printed matter, photographic and electronic data communications, and other forms of communications as may be used by the Tribunal. The Tribunal shall be entitled to use codes and to dispatch and receive correspondence and other material or communications

either by courier or in sealed bags, all of which shall be inviolable and shall have the same privileges and immunities as diplomatic couriers and bags.

3. The Tribunal shall have the right to operate radio and other telecommunications equipment on United Nations registered frequencies and those allocated to it by the Government, between the Tribunal offices, installations, facilities and means of transport, within and outside the host country, and in particular with the International Tribunal for the Former Yugoslavia, the Investigative/Prosecutorial Unit in Kigali and the United Nations Headquarters in New York.

4. For the fulfillment of its purposes, the Tribunal shall have the right to publish freely and without restrictions within the host country in conformity with this Agreement.

ARTICLE XII
PUBLIC SERVICES FOR THE PREMISES OF THE TRIBUNAL

1. The competent authorities shall secure, on fair conditions and upon the request of the Registrar or on his behalf, the public services needed by the Tribunal such as, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets.

2. In cases where electricity, water, gas or other services referred to in paragraph 1 above are made available to the Tribunal by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to diplomatic missions or other international organizations.

3. In case of force majeure resulting in a complete or partial disruption of the aforementioned services, the Tribunal shall for the performance of its functions be accorded the priority given to essential agencies and organs of the Government.

4. Upon request of the competent authorities, the Registrar, or an official designated by him, shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises of the Tribunal under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal. Underground constructions may be undertaken by the competent authorities on the premises of the Tribunal only after consultation with the Registrar, or an official designated by him, and under conditions which shall not disturb the carrying out of the functions of the Tribunal.

ARTICLE XIII
FLAG, EMBLEM AND MARKINGS

The Tribunal shall be entitled to display its flag, emblem and markings on the premises of the Tribunal, and to display its flag on vehicles used for official purposes.

ARTICLE XIV
PRIVILEGES AND IMMUNITIES OF THE JUDGES, THE PROSECUTOR AND THE REGISTRAR

1. The Judges, the Prosecutor and the Registrar shall, together with members of their families forming part of their household and who do not have the nationality of the United Republic of Tanzania in the host country, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accordance with international law and in particular under the General Convention and the Vienna Convention. They shall inter alia enjoy:

(a) personal inviolability, including immunity from arrest or detention;

(b) immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;

(c) inviolability for all papers and documents;

(d) exemption from immigration restrictions, alien registration or national service obligations;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

2. In the event the Tribunal operates a system for the payments of pensions and annuities to former Judges, Prosecutors and Registrars and their dependents, exemption from income tax in the host country shall not apply to such pensions and annuities.

3. Privileges and immunities are accorded to the Judges, the Prosecutor and the Registrar in the interest of the Tribunal and not for the personal benefit of individuals themselves. The right and the duty to waive the immunity in any case where it can be

waived without prejudice to the purpose for which it is accorded shall lie, as concerns the Judges, with the Tribunal in accordance with its rules; as concerns the Prosecutor and the Registrar, with the Secretary-General in consultation with the President.

ARTICLE XV
PRIVILEGES AND IMMUNITIES OF THE STAFF OF THE TRIBUNAL

1. The staff of the Tribunal shall be accorded the privileges and immunities as provided for in Articles V and VII of the General Convention. They shall inter alia:

(a) enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Tribunal;

(b) enjoy exemption from taxation on the salaries and emoluments paid to them by the Tribunal;

(c) enjoy immunity from national service obligations;

(d) enjoy immunity, together with members of their families forming part of their household, from immigration restrictions and alien registration;

(e) be accorded the same privileges in respect of exchange facilities as are accorded to the members of comparable rank of the diplomatic missions established in the host country;

(f) be given, together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as diplomatic agents;

(g) have the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host country.

2. Internationally-recruited staff of P-4 level and above who do not have the nationality of the United Republic of Tanzania shall, together with members of their families forming part of their household who do not have the nationality of the United Republic of Tanzania, be accorded the privileges, immunities and facilities as are accorded to members of comparable rank of the diplomatic staff of missions accredited to the Government.

3. Internationally-recruited staff, who do not have Tanzanian nationality shall also be entitled to the following additional facilities:

(a) to import free of custom and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing regulations of the host country;

(b) to import a motor vehicle free of customs and excise duties, including value-added tax, if applicable, in accordance with existing regulations of the host country applicable to members of diplomatic missions of comparable ranks;

(c) to export with relief from duties and taxes, on the termination of their function in the United Republic of Tanzania, their furniture and personal effects, including motor vehicles;

(d) they may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

4. The privileges and immunities are granted to the staff of the Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity in any particular case, where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Secretary-General.

5. The rights and entitlements referred to in paragraphs 1(g) and 3 above, shall be exercised in accordance with the formal requirements of the host country. These requirements, however, shall not affect the general principles laid down in this Article.

ARTICLE XVI
PERSONNEL RECRUITED LOCALLY AND ASSIGNED TO HOURLY RATES

Personnel recruited by the Tribunal locally and assigned to hourly rates, shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Tribunal. Such immunity shall continue to be accorded after termination of employment with the Tribunal. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Tribunal. The terms and conditions of their employment shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

ARTICLE XVII
PERSONS PERFORMING MISSIONS FOR THE TRIBUNAL

1. Persons performing missions for the Tribunal shall enjoy the privileges, immunities and facilities under Articles VI and VII of the General Convention, which are necessary for the independent exercise of their duties for the Tribunal.

2. The privileges and immunities are granted to persons performing missions for the Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity referred to in paragraph 1 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the President of the Tribunal.

ARTICLE XVIII
WITNESSES AND EXPERTS APPEARING BEFORE THE TRIBUNAL

1. The host country shall not exercise its criminal jurisdiction over witnesses and experts appearing from outside the host country on a summons or a request of the Tribunal, in respect of acts or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in paragraph 1 above shall cease when the witness or expert having had, for a period of fifteen consecutive days from the date when his or her presence is no longer required by the Tribunal or the Prosecutor, an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned, unless such return is on another summons or request of the Tribunal or the Prosecutor.

3. Witnesses and experts referred to in paragraph 1 above shall not be subjected by the host country to any measure which may affect the free and independent exercise of their functions for the Tribunal.

ARTICLE XIX
COUNSEL

1. The counsel of a suspect or an accused who has been admitted as such by the Tribunal, shall not be subjected by the host country to any measure which may affect the free and independent exercise of his or her functions under the Statute.

2. In particular, the counsel shall, when holding a certificate that he or she has been admitted as a counsel by the Tribunal, be accorded:

(a) exemption from immigration restrictions;

(b) inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

(c) immunity from criminal, civil and administrative jurisdiction in respect of words spoken or written and acts performed by him or her in his or her official capacity as counsel. Such immunity shall continue to be accorded to him or her after termination of his or her functions as a counsel of a suspect or accused.

3. This Article shall be without prejudice to such disciplinary rules as may be applicable to the counsel in accordance with the Rules of Procedure and Evidence adopted by the Tribunal.

4. The right and the duty to waive the immunity referred to in paragraph 2 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the Secretary-General.

ARTICLE XX
THE SUSPECT OR ACCUSED

1. The host country shall not exercise its criminal jurisdiction over any person present in its territory, who is to be or has been transferred as a suspect or an accused to the premises of the Tribunal pursuant to a request or an order of the Tribunal, in respect of acts, omissions or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in this Article shall cease when the person, having been acquitted or otherwise released by the Tribunal and having had for a period of fifteen consecutive days from the date of his or her release an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned.

ARTICLE XXI
CO-OPERATION WITH THE COMPETENT AUTHORITIES

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host country. They also have a duty not to interfere in the internal affairs of the host country.

2. The Tribunal shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

3. The Tribunal shall observe all security directives as agreed with the host country or as issued, in coordination with the United Nations Security Service, by the competent authorities responsible for security conditions within the penitentiary institution where the Tribunal area for detention is located, as well as all directives of the competent authorities responsible for fire prevention regulations.

ARTICLE XXII
NOTIFICATION

1. The Registrar shall notify the Government of the names and categories of persons referred to in this Agreement, in particular the Judges, the Prosecutors, the staff of the Tribunal, persons performing missions for the Tribunal, counsel admitted by the Tribunal, witnesses and experts called to appear before the Tribunal or the Prosecutor, and of any change in their status.

2. The Registrar shall also notify the Government of the name and identity of each official of the Tribunal who is entitled to carry fire arms on the premises of the Tribunal, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition.

ARTICLE XXIII
ENTRY INTO, EXIT FROM AND MOVEMENT WITHIN THE HOST COUNTRY

All persons referred to in Articles XIV, XV, XVII, XVIII and XIX of this Agreement as notified as such by the Registrar to the Government shall have the right of unimpeded entry into, exit from, and movement within, the host country, as appropriate and for the purposes of the Tribunal. They shall be granted facilities for speedy travel. Visas, entry permits or licenses, where required for official purposes of the Tribunal shall

be granted without charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses who have been notified as such by the Registrar to the Government.

ARTICLE XXIV
UNITED NATIONS LAISSEZ-PASSER AND CERTIFICATE

1. The Government shall recognise and accept United Nations Laissez-passer as a valid travel document.

2. In accordance with the provisions of Section 26 of the General Convention, the Government shall recognise and accept the United Nations certificate issued to persons travelling on the business of the Tribunal. The Government agrees to issue any required visas on such Laissez-passer or certificates.

ARTICLE XXV
IDENTIFICATION CARDS

1. At the request of the Tribunal, the Government shall issue identification cards to persons referred to in Articles XIV, XV, XVIII, XIX and XX of this Agreement certifying their status under this Agreement.

2. The Security Service of the Tribunal shall maintain photographic and other appropriate records of the suspect and accused persons referred to in Article XX.

ARTICLE XXVI
SECURITY, SAFETY AND PROTECTION OF PERSONS REFERRED TO IN THIS AGREEMENT

The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Tribunal, free from interference of any kind.

ARTICLE XXVII
SOCIAL SECURITY AND PENSION FUND

1. The staff of the Tribunal are subject to the United Nations Staff Regulations and Rules and, if they have an appointment of six months' duration or more, become participants in the United Nations Pension Fund. Accordingly, such staff shall be exempt

from all compulsory contributions to the social security organizations of the United Republic of Tanzania. Consequently, they shall not be covered against the risks described in the Tanzania social security regulations.

2. The provisions of paragraph 1 above shall apply mutatis mutandis to the members of the family forming part of the household of the persons referred to in paragraph 1 above, unless they are employed or self-employed in the host country or receive Tanzanian social security benefits.

ARTICLE XXVIII
ASSISTANCE IN OBTAINING SUITABLE ACCOMMODATION

The Government of the United Republic of Tanzania shall assist persons referred to in Articles XIV, XV, XVII, XVIII and XIX in obtaining suitable accommodation in the host country.

ARTICLE XXIX
SETTLEMENT OF DISPUTES

1. The Tribunal shall make provisions for appropriate modes of settlement of:

(a) disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

(b) disputes involving an official of the Tribunal who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

2. Any dispute between the Parties concerning the interpretation or application of this Agreement or the regulations of the Tribunal, which cannot be settled amicably, shall be submitted, at the request of either Party to the dispute, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the other Party may request the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment. The Parties shall draw up a special agreement determining the subject of the dispute. Failing the conclusion of such an agreement within a period of two months from the date on which

arbitration was requested, the dispute may be brought before the arbitral tribunal upon application of either Party. Unless the Parties decide otherwise, the arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes on the basis of the applicable rules of international law. In the absence of such rules, it shall decide ex aequo et bono. The decision shall be final and binding on the Parties to the dispute, even if rendered in default of one of the Parties.

ARTICLE XXX
FINAL PROVISIONS

1. The provisions of this Agreement shall be complementary to the provisions of the General Convention and the Vienna Convention, the latter Convention only insofar as it is relevant for the diplomatic privileges, immunities and facilities accorded to the appropriate categories of persons referred to in this Agreement. Insofar as any provision of this Agreement and any provisions of the General Convention and the Vienna Convention relate to the same subject matter, each of these provisions shall be applicable and neither shall limit the effect of the other.

2. This Agreement may be amended by mutual consent at any time at the request of either Party.

3. This Agreement shall cease to be in force if the seat of the Tribunal is removed from the territory of the host country or if the Tribunal is dissolved, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Tribunal at its seat in the host country and the disposition of its property therein, as well as provisions granting immunity from legal process of every kind in respect of words spoken or written or acts done in an official capacity, even after termination of employment with the Tribunal.

4. The provisions of this Agreement will be applied provisionally as from the date of signature.

5. This Agreement shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE at New York on this 31st day of August nineteen hundred and ninety five in duplicate, in the English language.

For the United Nations:

Mr. Hans Corell
Under-Secretary-General
for Legal Affairs

For the Government of the
United Republic of Tanzania:

Mr. Daudi Ngelautwa Mwakawago
Permanent Representative of the
Republic of Tanzania to the UN

ARUSHA INTERNATIONAL CONFERENCE CENTRE
Danford Mpumilwa
Director of Conferences and Marketing
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NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR - MINUAR

P. O. Box 3081
ARUSHA
TANZANIA

NOTE FOR THE FILE

On 1 September 1995, I accompanied the following members of the official United Nations delegation from Kigali to Arusha, Tanzania to visit the premises of the International Tribunal for Rwanda (ITR): the Prosecutor of the International Tribunal, Judge Richard Goldstone; the Deputy Prosecutor, Judge Honoré Rakotomanana; the President of the Tribunal, Judge Laïty Kama; a representative from the Office of Legal Affairs in New York, Mr. Andronico Adede; and the External Relations Officer for the Tribunal in Kigali, Mr. Alain Sigg.

The flight to Kilimanjaro Airport on the Beechcraft 200 took approximately two hours. Upon arrival at the airport, we were greeted by the assistant to the UNDP Resident Representative in Dar-es-Salaam, as well as members of the management board of the Arusha International Conference Centre (AICC). We then proceeded to drive to Arusha in three 4x4 vehicles. The trip lasted about 40 minutes and although road conditions were very good for most of the journey, the last stretch of the road which was under construction was not.

Arusha itself appeared to be a small town similar to Kigali in its general aspects. On our way, we passed by a few small hotels, the AICC hospital and several schools, including an international school, which were located in large single villas. Small businesses and shops were operating, but the place was not congested.

The Arusha International Conference Centre (AICC)

When we arrived at the AICC, we were led in by the main public entrance to the building. The building itself appeared old and grey from the outside. We were surprised to see the large number of people walking around and their apparent free access to all areas of the building. Besides offices, there were small shops, businesses and fast-food outlets located on the ground floor.

We were led by the building management team to a conference room on the fifth floor where we were joined by the Director-General of the AICC and introductions were made. We then headed for the areas designated for the ITR's operations: the entire third and fourth floors, as well as an annex on the ground floor. On the fourth floor, we inspected two large conference rooms which were considered suitable for trial chambers, as well as office space. The third floor only comprised offices, but all were satisfied with the general condition of the premises on both floors, as well as the square footage at the disposal of the Tribunal.

However, several concerns were expressed regarding the building's security arrangements and accessibility to the premises by the general public. In this regard, we were assured by the building management team that architectural plans would be made to create a separate access to the premises occupied by the ITR to be used exclusively by ITR personnel. We were shown a rear entrance to the building for this purpose, as well as a small parking lot which would also be used for ITR staff only. They informed us that although the general security for the building would be provided by the Tanzanian Government, security for the premises occupied by the ITR would be the UN's responsibility.

We then visited the annex located on the ground floor. Once again, we were pleased with the facilities to be placed at the ITR's disposal, except for signs of leakage from the roof of some of the offices. The Director-General informed us that although his building management team had proceeded with the bidding process to select contractors for the necessary repair work, they had been informed by New York to discontinue such efforts as the matter would be handled by the United Nations. The UN team found this development to be quite disconcerting, considering the fact that the rainy season in Arusha begins in October and the repairs must be completed before then.

Visit to proposed prison site

Following an inspection of the IACC premises, we then proceeded to visit the proposed site of a prison to be built according to UN specifications. The site was located adjacent to an existing prison situated on the outskirts of Arusha near a small airfield. We spoke to the prison authorities, but were unable to specify any details (e.g. size of prison) due to the lack of sufficient information on the ITR's needs at this point in time. However, Judge Goldstone did state that he would like prison security to be provided by the Tanzanian authorities as it would obviate the need for recruiting an additional 30-40 ITR personnel.

Living accomodations

The Director-General informed us that his staff had located houses for the accomodation of ITR staff and that arrangements could also be made with the local hotels for individual rooms and apartments. Judge Goldsone specified that six houses would be needed to provide accomodation for the judges, but temporary housing should also be made available for the investigators and other staff. We were able to visit a house under construction (which met the approval of Judge Kama) in an upscale neighbourhood outside Arusha where several large and attractive villas (one of which had its own satellite dish) appeared to have been built recently.

Other matters

Although there was a general consensus among the UN team that the facilities at the AICC and the living arrangements in Arusha would be adequate for the Tribunal's needs, several outstanding issues remain to be resolved, including the provision of personal security to the judges and other staff members, as well as to the premises of the ITR. Other concerns include the provision of transportation and separate communication facilities for the Tribunal's operations. I believe some of these matters will be discussed during the scheduled visit of a UNAMIR communications/logistics team to Arusha this week.

Ladan M. Rafii
Political/Legal Officer
4 September 1995

cc: SRSG, ED

UNITED NATIONS
ASSISTANCE MISSION TO RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

INTER-OFFICE MEMORANDUM

DATE: August 30, 1995

TO: Justice Goldstone
Prosecutor
International Tribunal for Rwanda

THROUGH: W. Clive
Chief of Integrated Support Services

FROM: T. Anglin
Chief Communications Officer

SUBJECT: TECHNICAL INSPECTION OF ARUSHA TRIBUNAL OFFICES

In anticipation of the establishment of the Tribunal office in Arusha, and as a follow-up to your trip to the city, UNAMIR will be sending a technical inspection team to Arusha next week. The team will look into issues such as the satellite communications network, existing telephone facilities and VHF radio requirements. Mr. Joseph Lombardo, the administrative and logistic liaison officer for the Tribunal will be accompanying the team and will evaluate the conference facilities as well as any support services that are available in the city.

We will also endeavour to interface with local government authorities to secure the proper authorization for any communications systems that will be installed in support of the Tribunal's work in Tanzania.

The team will depart Kigali on 8 September and return on 10 September. Please contact Mr. Lombardo at (212)-963-3582 extension 11221 if you would like any additional work to be carried out during our trip.

for Tribunal file
[DRAFT]

AGREEMENT

BETWEEN

THE UNITED NATIONS

AND

THE UNITED REPUBLIC OF TANZANIA

CONCERNING THE HEADQUARTERS OF THE INTERNATIONAL TRIBUNAL

FOR RWANDA

Whereas the Security Council of the United Nations acting under Chapter VII of the Charter of the United Nations inter alia decided, by its resolution 955 (1994) of 8 November 1994, "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994";

Whereas the International Tribunal for Rwanda is established as a subsidiary organ within the terms of Article 29 of the Charter of the United Nations;

Whereas the Security Council, by its resolution 977 (1995) of 22 February 1995 decided that "subject to the conclusion of

appropriate arrangements between the United Nations and the Government of the United Republic of Tanzania, the International Tribunal for Rwanda shall have its seat at Arusha";

Whereas the United Nations and the United Republic of Tanzania wish to conclude an Agreement regulating matters arising from the establishment and necessary for the proper functioning of the International Tribunal for Rwanda in the United Republic of Tanzania;

Whereas the United Nations and the United Republic of Tanzania have agreed as follows.

Hereby Agree as follows

ARTICLE I

DEFINITIONS

For the purpose of the present Agreement, the following definitions shall apply:

(a) "the Tribunal" means the International Tribunal for Rwanda established by the Security Council pursuant to its resolution 955 (1994);

(b) "the premises of the Tribunal" means buildings, parts of buildings and areas, including installations and

facilities made available to, maintained, occupied or used by the Tribunal in the host country in connection with its functions and purposes;

(c) "the host country" means the United Republic of Tanzania;

(d) "the Government" means the Government of the United Republic of Tanzania;

(e) "the United Nations" means the United Nations, an international governmental organization established under the Charter of the United Nations;

(f) "the Security Council" means the Security Council of the United Nations;

(g) "the Secretary-General" means the Secretary-General of the United Nations;

(h) "the competent authorities" means national, regional, provincial, municipal and other competent authorities under the law of the host country;

(i) "the Statute" means the Statute of the Tribunal adopted by the Security Council by its resolution 955 (1994);

(j) "the Judges" means the Judges of the Tribunal as referred to in Article 12 of the Statute;

(k) "the President" means the President of the Tribunal as referred to in Article 13 of the Statute;

(l) "the Prosecutor" means the Prosecutor of the Tribunal as referred to in Article 15 of the Statute;

(m) "the Registrar" means the Registrar of the Tribunal as appointed by the Secretary-General pursuant to Article 16 of the Statute;

(n) "the staff of the Tribunal" means the staff of the Office of the Prosecutor as referred to in paragraph 3 of Article 15 of the Statute and the staff of the Registry as referred to in paragraph 4 of Article 16 of the Statute;

(o) "persons performing missions for the Tribunal" means persons performing certain missions for the Tribunal in the investigation or prosecution or in the judicial or appellate proceedings;

(p) "the witnesses" means persons referred to as such in the Statute;

(q) "experts" means persons called at the instance of the Tribunal, the Prosecutor, the suspect or the accused to present testimony based on special knowledge, skills, experience or training;

(r) "counsel" means a person referred to as such in the Statute.

(s) "the suspect" means a person referred to as such in the Statute;

(t) "the accused" means a person referred to as such in the Statute;

(u) "the General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the United Republic of Tanzania acceded on 29 October 1962;

(v) "the Vienna Convention" means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961, to which the United Republic of Tanzania acceded on 5 November 1962;

(w) "the regulations" means the regulations adopted by the Tribunal pursuant to this Agreement.

ARTICLE II

PURPOSE AND SCOPE OF THE AGREEMENT

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Tribunal in the United Republic of Tanzania.

ARTICLE III

JURIDICAL PERSONALITY OF THE TRIBUNAL

1. The Tribunal shall possess in the host country full juridical personality. This shall, in particular, include the capacity:

a) to contract;

b) to acquire and dispose of movable and immovable property;

c) to institute legal proceedings.

2. For the purpose of this Article the Tribunal shall be represented by the Registrar.

ARTICLE IV

APPLICATION OF THE GENERAL AND VIENNA CONVENTIONS

The General Convention and the Vienna Convention shall be applicable mutatis mutandis to the Tribunal, its property, funds and assets, to the premises of the Tribunal, to the Judges, the Prosecutor and the Registrar, the staff of the Tribunal and persons performing missions for the Tribunal.

ARTICLE V

INVIOLABILITY OF THE PREMISES OF THE TRIBUNAL

1. The premises of the Tribunal shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Tribunal shall not be dispossessed of all or any part of the premises of the Tribunal without the express consent of the Tribunal. The property, funds and assets of the Tribunal, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

2. The competent authorities shall not enter the premises of the Tribunal to perform any official duty, except with the express consent, or at the request of, the Registrar or an

official designated by him. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Tribunal except with the consent of and in accordance with conditions approved by the Registrar.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises of the Tribunal, the consent of the Registrar, or an official designated by him, to any necessary entry into the premises of the Tribunal shall be presumed if neither of them can be reached in time.

4. Subject to paragraphs 1, 2 and 3 above, the competent authorities shall take the necessary action to protect the premises of the Tribunal against fire or other emergency.

5. The Tribunal may expel or exclude persons from the premises of the Tribunal for violation of its regulations.

ARTICLE VI

LAW AND AUTHORITY ON THE PREMISES OF THE TRIBUNAL

1. The premises of the Tribunal shall be under the control and authority of the Tribunal, as provided in this Agreement.

2. Except as otherwise provided in this Agreement or in the General Convention, the laws and regulations of the host country shall apply within the premises of the Tribunal.

3. The Tribunal shall have the power to make regulations operative on the premises of the Tribunal for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Tribunal shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. [No law or regulation of the host country which is inconsistent with a regulation of the Tribunal shall, to the extent of such inconsistency, be applicable within the premises of the Tribunal.] limited application

4. Any dispute between the Tribunal and the host country, as to whether a regulation of the Tribunal is authorized by this Article, or as to whether a law or regulation of the host country is inconsistent with any regulation of the Tribunal authorized by this Article, shall be promptly settled by the procedure set out in Article XXIX, paragraph 2 of this Agreement. Pending such

settlement, the regulation of the Tribunal shall apply and the law or regulation of the host country shall be inapplicable within the premises of the Tribunal to the extent that the Tribunal claims it to be inconsistent with its regulation.

ARTICLE VII

PROTECTION OF THE PREMISES OF THE TRIBUNAL AND THEIR VICINITY

1. The competent authorities shall exercise due diligence to ensure the security and protection of the Tribunal and to ensure that the tranquility of the Tribunal is not disturbed by the intrusion of persons or groups of persons from outside the premises of the Tribunal or by disturbances in their immediate vicinity and shall provide to the premises of the Tribunal the appropriate protection as may be required.

2. If so requested by the President or the Registrar of the Tribunal, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Tribunal or in the immediate vicinity thereof, and for the removal of persons therefrom.

3. The duty of the Tribunal to protect premises from becoming [illegible] of Article 2 Section 2.b) of Secretariat draft.

ARTICLE VIII

FUNDS, ASSETS AND OTHER PROPERTY

1. The Tribunal, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Tribunal has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. Without being restricted by financial controls, regulations or moratoria of any kind, the Tribunal:

a) may hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

b) shall be free to transfer its funds, gold or currency from one country to another, or within the host country, to the United Nations or any other agency.

ARTICLE IX

INVIOLABILITY OF ARCHIVES AND ALL DOCUMENTS OF THE TRIBUNAL

The archives of the Tribunal, and in general all documents and materials made available, belonging to or used by it, wherever located in the host country and by whomsoever held, shall be inviolable.

ARTICLE X

EXEMPTION FROM TAXES AND DUTIES

1. The Tribunal, its assets, income and other property shall be exempt from all direct and indirect taxes, including, but not limited to, income tax, value added tax, capital tax, corporate tax, trade tax, motor vehicle tax, land tax, property tax, fees, tolls, excise duty, conveyance duty or any other duties, levied by state and other regional or local authorities or otherwise. It is understood, however, that the Tribunal shall not claim exemption from taxes and duties which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

2. The Tribunal, its funds, assets and other property shall be exempt from all custom duties in respect of articles imported or

exported by the Tribunal for its official use, including motor vehicles. The Tribunal shall also be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications.

ARTICLE XI

COMMUNICATIONS FACILITIES

1. The Tribunal shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of the Tribunal shall be subject to censorship by the Government. Such immunity from censorship shall extend to printed matter, photographic and electronic data communications, and other forms of communications as may be used by the Tribunal. The Tribunal shall be entitled to use codes and to dispatch and receive correspondence and other material or communications either by courier or in sealed bags, all of which shall be inviolable and

shall have the same privileges and immunities as diplomatic couriers and bags.

3. The Tribunal shall have the right to operate radio and other telecommunications equipment on United Nations registered frequencies and those allocated to it by the Government, between the Tribunal offices, installations, facilities and means of transport, within and outside the host country, and in particular with the International Tribunal for the Former Yugoslavia, the Investigative/Prosecutorial Unit in Kigali and the United Nations Headquarters in New York.

4. For the fulfilment of its purposes, the Tribunal shall have the right to publish freely and without restrictions within the host country in conformity with this Agreement.

ARTICLE XII

PUBLIC SERVICES FOR THE PREMISES OF THE TRIBUNAL

1. The competent authorities shall secure, on fair conditions and upon the request of the Registrar or on his behalf, the public services needed by the Tribunal such as, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets.

2. In cases where electricity, water, gas or other services referred to in paragraph 1 above are made available to the Tribunal by the competent authorities, or where the prices thereof are under their control, [the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies and organs of the Government.] diplomatic Missions and International Organizations. Basis of comparison should be diplomatic missions Int' Org

3. In case of force majeure resulting in a complete or partial disruption of the aforementioned services, the Tribunal shall for the performance of its functions be accorded the priority given to essential agencies and organs of the Government.

4. Upon request of the competent authorities, the Registrar, or an official designated by him, shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises of the Tribunal under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal. Underground constructions may be undertaken by the competent authorities on the premises of the Tribunal only after consultation with the Registrar, or an official designated by him, and under conditions which shall not disturb the carrying out of the functions of the Tribunal.

ARTICLE XIII

FLAG, EMBLEM AND MARKINGS

The Tribunal shall be entitled to display its flag, emblem and markings on the premises of the Tribunal, and to display its flag on vehicles used for official purposes.

ARTICLE XIV

PRIVILEGES AND IMMUNITIES OF THE JUDGES, THE PROSECUTOR AND THE REGISTRAR

1. The Judges, the Prosecutor and the Registrar shall, together with members of their families forming part of their household and who do not have the nationality of the United Republic of Tanzania or Tanzanian permanent residence status in the host country, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accordance with international law and in particular under the General Convention and the Vienna Convention. They shall inter alia enjoy:

a) personal inviolability, including immunity from arrest or detention;

b) immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;

c) inviolability for all papers and documents;

d) exemption from immigration restrictions, alien registration or national service obligations;

e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

2. In the event the Tribunal operates a system for the payments of pensions and annuities to former Judges, Prosecutors and Registrars and their dependants, exemption from income tax in the host country shall not apply to such pensions and annuities.

3. Privileges and immunities are accorded to the Judges, the Prosecutor and the Registrar in the interest of the Tribunal and not for the personal benefit of individuals themselves. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie, as concerns the Judges, with the Tribunal in accordance with its rules; as concerns the Prosecutor and the Registrar, with the Secretary-General in consultation with the President.

not explicit enough

ARTICLE XV

PRIVILEGES AND IMMUNITIES OF THE STAFF OF THE TRIBUNAL

1. The staff of the Tribunal shall, regardless of their nationality, be accorded the privileges and immunities as provided for in Articles V and VII of the General Convention. They shall inter alia:

a) enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Tribunal;

b) enjoy exemption from taxation on the salaries and emoluments paid to them by the Tribunal;

c) enjoy immunity from national service obligations;

d) enjoy immunity, together with members of their families forming part of their household, from immigration restrictions and alien registration;

e) be accorded the same privileges in respect of exchange facilities as are accorded to the members of comparable

rank of the diplomatic missions established in the host country;

f) be given, together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as diplomatic agents;

g) have the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host country.

2. Internationally-recruited staff of P-4 level and above who do not have the nationality of the United Republic of Tanzania or permanent residence status in the host country shall, together with members of their families forming part of their household who do not have the nationality of the United Republic of Tanzania or permanent residence status in the host country, be accorded the privileges, immunities and facilities as are accorded to members of comparable rank of the diplomatic staff of missions accredited to the Government.

3. Internationally-recruited staff, who do not have Tanzanian nationality or permanent residence status in the host country, shall also be entitled to the following additional facilities:

rank of the diplomatic missions established in the host country;

f) be given, together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as diplomatic agents;

g) have the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host country.

2. Internationally-recruited staff of P-4 level and above who do not have the nationality of the United Republic of Tanzania or permanent residence status in the host country shall, together with members of their families forming part of their household who do not have the nationality of the United Republic of Tanzania or permanent residence status in the host country, be accorded the privileges, immunities and facilities as are accorded to members of comparable rank of the diplomatic staff of missions accredited to the Government.

3. Internationally-recruited staff, who do not have Tanzanian nationality or permanent residence status in the host country, shall also be entitled to the following additional facilities:

a) to import free of custom and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing regulations of the host country;

b) to import a motor vehicle free of customs and excise duties, including value-added tax, in accordance with existing regulations of the host country applicable to members of diplomatic missions of comparable ranks;

c) to export with relief from duties and taxes, on the termination of their function in the United Republic of Tanzania, their furniture and personal effects, including motor vehicles;

d) they may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

4. The privileges and immunities are granted to the staff of the Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity in any particular case, where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Secretary-General.

5. The rights and entitlements referred to in paragraphs 1(g) and 3 above, shall be exercised in accordance with the formal requirements of the host country. These requirements, however, shall not affect the general principles laid down in this Article.

Cf Section 13 of Act 5/86

ARTICLE XVI

PERSONNEL RECRUITED LOCALLY AND ASSIGNED TO HOURLY RATES

Personnel recruited by the Tribunal locally and assigned to hourly rates, shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Tribunal. Such immunity shall continue to be accorded after termination of employment with the Tribunal. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the Tribunal. The terms and conditions of their employment shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

ARTICLE XVII

PERSONS PERFORMING MISSIONS FOR THE TRIBUNAL

1. Persons performing missions for the Tribunal shall enjoy the privileges, immunities and facilities under Articles VI and VII of the General Convention, which are necessary for the independent exercise of their duties for the Tribunal.

2. The privileges and immunities are granted to persons performing missions for the Tribunal in the interest of the Tribunal and not for their personal benefit. The right and the duty to waive the immunity referred to in paragraph 1 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the President of the Tribunal.

ARTICLE XVIII

WITNESSES AND EXPERTS APPEARING BEFORE THE TRIBUNAL

1. The host country shall not exercise its criminal jurisdiction over witnesses and experts appearing from outside the host country on a summons or a request of the Tribunal, in respect of acts or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in paragraph 1 above shall cease when the witness or expert having had, for a period of fifteen consecutive days from the date when his or her presence is no longer required by the Tribunal or the Prosecutor, an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned, unless such return is on another summons or request of the Tribunal or the Prosecutor.

3. Witnesses and experts referred to in paragraph 1 above shall not be subjected by the host country to any measure which may affect the free and independent exercise of their functions for the Tribunal.

ARTICLE XIX

COUNSEL

1. The counsel of a suspect or an accused who has been admitted as such by the Tribunal, shall not be subjected by the host country to any measure which may affect the free and independent exercise of his or her functions under the Statute.

2. In particular, the counsel shall, when holding a certificate that he or she has been admitted as a counsel by the Tribunal, be accorded:

(a) exemption from immigration restrictions;

(b) inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

(c) immunity from criminal, civil and administrative jurisdiction in respect of words spoken or written and acts performed by him or her in his or her official capacity as counsel. Such immunity shall continue to be accorded to him or her after termination of his or her functions as a counsel of a suspect or accused.

3. This Article shall be without prejudice to such disciplinary rules as may be applicable to the counsel.

The right and the duty to waive the immunity referred to in paragraph 2 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the Secretary-General.

ARTICLE XX

THE SUSPECT OR ACCUSED

1. The host country shall not exercise its criminal jurisdiction over persons present in its territory, who are to be or have been transferred as a suspect or an accused to the premises of the Tribunal pursuant to a request or an order of the Tribunal, in respect of acts, omissions or convictions prior to their entry into the territory of the host country.

2. The immunity provided for in this Article shall cease when the person, having been acquitted or otherwise released by the Tribunal and having had for a period of fifteen consecutive days from the date of his or her release an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned.

- Where does he acquitted or convicted person go after the trial?
Link with Art XXI (3)

ARTICLE XXI

CO-OPERATION WITH THE COMPETENT AUTHORITIES

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host country. They also have a duty not to interfere in the internal affairs of the host country.

2. The Tribunal shall cooperate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

3. The Tribunal shall observe all security directives as agreed with the host country or as issued, in coordination with the United Nations Security Service, by the competent authorities responsible for security conditions within the penitentiary institution where the Tribunal area for detention is located, as well as all directives of the competent authorities responsible for fire prevention regulations.

ARTICLE XXII

NOTIFICATION

1. The Registrar shall notify the Government of the names and categories of persons referred to in this Agreement, in particular the Judges, the Prosecutors, the staff of the Tribunal, persons performing missions for the Tribunal, counsel admitted by the Tribunal, witnesses and experts called to appear before the Tribunal or the Prosecutor, and of any change in their status.

2. The Registrar shall also notify the Government of the name and identity of each official of the Tribunal who is entitled to carry fire arms on the premises of the Tribunal, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition.

ARTICLE XXIII

ENTRY INTO, EXIT FROM AND MOVEMENT WITHIN THE HOST COUNTRY

All persons referred to in Articles XIV, XV, XVII, XVIII and XIX of this Agreement as notified as such by the Registrar to the Government shall have the right of unimpeded entry into, exit from, and movement within, the host country, as appropriate and for the purposes of the Tribunal. They shall be granted facilities for speedy travel. Visas, entry permits or licenses, where required shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses who have been notified as such by the Registrar to the Government.

ARTICLE XXIV

UNITED NATIONS LAISSEZ-PASSER AND CERTIFICATE

1. The Government shall recognise and accept United Nations Laissez-passer as a valid travel document.

2. In accordance with the provisions of Section 26 of the General Convention, the Government shall recognise and accept the United Nations certificate issued to persons travelling on the business of the Tribunal. The Government agrees to issue any required visas on such Laissez-passer or certificates.

ARTICLE XXV

IDENTIFICATION CARDS

1. At the request of the Tribunal, the Government shall issue identification cards to persons referred to in Articles XIV, XV, XVIII, XIX and XX of this Agreement certifying their status under this Agreement.

2. The Security Service of the Tribunal shall maintain photographic and other appropriate records of the suspect and accused persons referred to in Article XXI.

ARTICLE XXVI

SECURITY, SAFETY AND PROTECTION OF PERSONS REFERRED TO IN THIS AGREEMENT

The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security,

safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Tribunal, free from interference of any kind.

ARTICLE XXVII

SOCIAL SECURITY AND PENSION FUND

1. The staff of the Tribunal are subject to the United Nations Staff Regulations and Rules and, if they have an appointment of six months' duration or more, become participants in the United Nations Pension Fund. Accordingly, such staff shall be exempt from all compulsory contributions to the social security organizations of the United Republic of Tanzania. Consequently, they shall not be covered against the risks described in the Tanzania social security regulations.

2. The provisions of paragraph 1 above shall apply mutatis mutandis to the members of the family forming part of the household of the persons referred to in paragraph 1 above, unless they are employed or self-employed in the host country or receive Tanzanian social security benefits.

ARTICLE XXVIII

ASSISTANCE IN OBTAINING SUITABLE ACCOMMODATION

The Government of the United Republic of Tanzania shall assist persons referred to in Articles XIV, XV, XVII, XVIII and XIX in obtaining suitable accommodation in the host country.

ARTICLE XXIX

SETTLEMENT OF DISPUTES

1. The Tribunal shall make provisions for appropriate modes of settlement of:

a) disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

b) disputes involving an official of the Tribunal who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

2. Any dispute between the Parties concerning the interpretation or application of this Agreement or the regulations of the Tribunal, which cannot be settled amicably, shall be submitted, at the request of either Party to the dispute, to an arbitral tribunal, composed of three members. Each Party shall appoint one

arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the other Party may request the President of the International Court of Justice to make the necessary appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

The Parties shall draw up a special agreement determining the subject of the dispute. Failing the conclusion of such an agreement within a period of two months from the date on which arbitration was requested, the dispute may be brought before the arbitral tribunal upon application of either Party. Unless the Parties decide otherwise, the arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes on the basis of the applicable rules of international law. In the absence of such rules, it shall decide ex aequo et bono. The decision shall be final and binding on the Parties to the dispute, even if rendered in default of one of the Parties.